Appendix C

Federal Register Regulations

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Appendix C1

Proposed Phase II Regulations
(Federal Register Volume 64, No. 235, December 8, 1999,
Rules and Regulations, pp. 68743-68770)

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6. Comply With Applicable Requirements as a Discharger

Today's final rule covers federally operated facilities in a variety of ways. These facilities are generally areas where people reside, such as a federal prison, hospital, or military base. It also includes federal parkways and road systems with separate storm sewer systems. Today's rule requires federal MS4s to comply with the same application deadlines that apply to regulated small MS4s generally. EPA believes that all federal MS4s serve populations of less than 100,000.

EPA received several comments that asked if individual buildings like post offices are considered to be small MS4s and thereby regulated in today's rule if they are in an urbanized area. Most of these buildings have at most a parking lot with runoff or a storm sewer that connects with a municipality's MS4. EPA does not intend that individual federal buildings be considered to be small MS4s. This is discussed in section II.H.2.b. of today's preamble.

Federal facilities can also be included under requirements addressing storm water discharges associated with small construction activities. In any case, discharges from these facilities will need to comply with all applicable NPDES requirements and any additional water quality-related requirements imposed by a State, Tribal, or local government. Failure to comply can result in enforcement actions. Federal facilities can act as models for municipal and private sector facilities and implement or test state-of-the-art management practices and control measures.

E. State Role

Today's final rule sets forth an NPDES approach for implementing the extension of the existing storm water discharge control program under CWA section 402(p)(6). State assumption of the NPDES program is voluntary, consistent with the principles of federalism. Because most States are approved to implement the NPDES program, they will tailor their storm water discharge control programs to address their water quality needs and objectives. While today's rule establishes the basic framework for the section 402(p)(6) program, States as well as Tribes (see discussion in section II.F) have an important role in fine-tuning the program to address the water quality issues within their jurisdictions. The basic framework allows for adjustments based on factors that vary geographically, including climate patterns and terrain.

Where States do not have NPDES authority, they are not required to implement the storm water discharge control program, but they may still participate in water quality protection through participation in the CWA section 401 certification process (for any permits) and through development of water quality standards and TMDLs.

1. Develop the Program

In expanding the existing NPDES program for storm water discharges, States must evaluate whether revisions to their NPDES programs are necessary. If so, modifications must be made in accordance with § 123.62. Under § 123.62, States must revise their NPDES programs within 1 year, or within 2 years if statutory changes are necessary.

Some States and departments of transportation (DOTs) commented that this timeframe is too short, anticipating that the State legislative process and the modification of regulations combined would take beyond 2 years. The deadline language in § 123.62 is not new language for the storm water discharge control program; it applies to all NPDES programs. EPA believes the vast majority of States will meet the deadline and will work with States in those cases where there may be difficulty meeting this deadline due to the timing of legislative sessions and the regulatory development process.

An authorized State NPDES program must meet the requirements of CWA section 402(b) and conform to the guidelines issued under CWA section 304(i)(2). Today's final rule under § 123.25 adds specific cross references to the storm water discharge control program components to ensure that States adequately address these requirements.

2. Comply With Applicable Requirements as a Discharger

Today's final rule covers State operated separate storm sewer systems in a variety of ways. These systems generally drain areas where people reside, such as a prison, hospital, or other populated facility. These systems are included under the definition of a regulated small MS4, which specifically identifies systems operated by State departments of transportation. Alternatively, storm water discharges from State activities may be regulated under the section addressing storm water discharges associated with small construction activities. In any case, discharges from these facilities must comply with all applicable NPDES requirements. Failure to comply can result in enforcement actions. State facilities can act as models for municipal and private sector facilities and implement or test state-of-the-art management practices and control measures.

3. Communicate With EPA

Under approved NPDES programs, States have an ongoing obligation to share information with EPA. This dialogue is particularly important in the CWA section 402(p)(6) storm water program where these governments continue to develop a great deal of the guidance and outreach related to water quality.

F. Tribal Role

The proposal to today's final rule provides background information on EPA's 1984 Indian Policy and the criteria for treatment of an Indian Tribe in the same manner as a State. Today's final rule extends the existing NPDES program for storm water discharges to two types of dischargers located in Indian country. First, the final rule designates storm water discharges from any regulated small MS4, including Tribal systems. Second, the final rule regulates discharges associated with construction activity disturbing between one and five acres of land, including sites located in Indian country. Operators in each of these categories of regulated activity must apply for coverage under an NPDES permit by 3 years and 90 days from the date of publication of today's final rule. Under existing regulations, however, EPA or an authorized NPDES Tribe may require a specified storm water discharger to apply for NPDES permit coverage before this deadline based on a determination that the discharge is contributing to a violation of a water quality standard (including designated uses) or is a significant contributor of pollutants.

Under today's rule, a Tribal governmental entity may regulate storm water discharges on its reservation in two ways—as either an NPDES-authorized Tribe or as a regulated MS4. If a Tribe is authorized to operate the NPDES program, the Tribe must implement today's final rule for the NPDES program for storm water for covered dischargers located within the EPA recognized boundaries. Otherwise, EPA is generally the permitting/program authority within Indian country. Discussions about the State Role in the preceding section also apply to NPDES authorized Tribes. For additional information on the role and responsibilities of the permitting authority in the NPDES storm water program, see § 123.35 (and Section II.G. of today's preamble) and § 123.25(a).

Under today's final rule, if the Indian reservation is located entirely or partially within an ''urbanized area,'' as defined in § 122.32(a)(1), the Tribe must obtain an NPDES permit if it operates a small MS4 within the urbanized area portion. Tribal MS4s located outside an urbanized area are not automatically covered, but may be designated by EPA pursuant to § 122.32(a)(2) of today's rule or may request designation as a regulated small MS4 from EPA. A Tribe that is a regulated MS4 for NPDES program purposes is required to implement the six minimum control measures to the extent allowable under Federal law.

The Tribal representative on the Storm Water Phase II FACA Subcommittee asked EPA to provide a list of the Tribes located in urbanized areas that would fall within the NPDES storm water program under today's final rule. In December 1996, EPA developed a list of federally recognized American Indian Areas located wholly or partially in Bureau of the Census-designated urbanized areas (see Appendix 1). Appendix 1 not only provides a listing of reservations and individual Tribes, but also the name of the particular urbanized area in which the reservation is located and an indication of whether the urbanized area contains a medium or large MS4 that is already covered by the existing Phase I regulations.

Some of the Tribes listed in Appendix 1 are only partially located in an urbanized area. If the Tribe's MS4 serves less than 1,000 people within an urbanized area, the permitting authority may waive the Tribe's MS4 storm water requirements if it meets the conditions of § 122.32(c). EPA does not have information on the Tribal populations within the urbanized areas, so it can not identify the Tribes that are eligible for a waiver. Therefore, a Tribe that believes it qualifies for a waiver should contact its permitting authority.

G. NPDES Permitting Authority's Role for the NPDES Storm Water Small MS4 Program

As noted previously, the NPDES permitting authority can be EPA or an authorized State or an authorized Tribe. The following discussion describes the role of the NPDES permitting authority under today's final rule.

1. Comply With Implementation Requirements

NPDES permitting authorities must perform certain duties to implement the NPDES storm water municipal program. Section 123.35(a) of today's final rule emphasizes that permitting authorities have existing obligations under the NPDES program. Section 123.35 focuses on specific issues related to the role of the NPDES authority to support administration and implementation of the municipal storm water program under CWA section 402(p)(6).

2. Designate Sources

Section 123.35(b) of today's final rule addresses the requirements for the NPDES permitting authority to designate sources of storm water discharges to be regulated under §§ 122.32 through 122.36. NPDES permitting authorities must develop a process, as well as criteria, to designate small MS4s. They must also have the authority to designate a small MS4 if and when circumstances that support a waiver under § 122.32(c) change. EPA may make designations if an NPDES-approved State or Tribe fails to do so.

NPDES permitting authorities must examine geographic jurisdictions that they believe should be included in the storm water discharge control program but are not located in an ''urbanized area''. Small MS4s in these areas are not designated automatically. Discharges from such areas should be brought into the program if found to have actual or potential exceedances of water quality standards, including impairment of designated uses, or other adverse impacts on water quality, as determined by local conditions or watershed and TMDL assessments. EPA's aim is to address discharges to impaired waters and to protect waters with the potential for problems. EPA encourages NPDES permitting authorities, local governments, and the interested public to work together in the context of a watershed plan to address water quality issues, including those associated with municipal storm water runoff.

EPA received comments stating that the process of developing criteria and applying it to all MS4s outside an urbanized area serving a population of 10,000 or greater and with a density of 1,000 people per square mile is too time-consuming and resource-intensive. These commenters believe that the permitting authority should decide which MS4s must be brought into the storm water discharge control program and that population and density should not be an overriding criteria. One suggested way of doing so was to only designate MS4s with demonstrated contributions to the impairment of water quality uses as shown by a TMDL. EPA disagrees with this suggestion. The TMDL process is time-consuming. MS4s outside of urbanized areas may cause water quality problems long before a TMDL is completed.

EPA believes that permitting authorities should consider the potential water quality impacts of storm water from all jurisdictions with a population of 10,000 or greater and a density of 1,000 people per square mile. EPA is using data summarized in the NURP study and in the CWA section 305(b) reports to support this approach for targeted designation outside of urbanized areas. EPA is not mandating which criteria are to be used, but has provided examples of criteria that may be useful in evaluating potential water quality impacts. EPA believes that the flexibility provided in this section of today's final rule allows the permitting authority to develop criteria and a designation process that is easy to use and protects water quality. Therefore, the provisions of § 123.35(b) remain as proposed.

a. Develop Designation Criteria

Under § 123.35(b), the NPDES permitting authority must establish designation criteria to evaluate whether a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including adverse habitat and biological impacts.

EPA recommends that NPDES permitting authorities consider, in a balanced manner, certain locally-focused criteria for designating any MS4 located outside of an urbanized area on the basis of significant water quality impacts. EPA recommends consideration of criteria such as discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contribution of pollutants to waters of the United States, and ineffective control of water quality concerns by other programs. These suggested designation criteria are intended to help encourage the permitting authority to use an objective method for identifying and designating, on a local basis, sources that adversely impact water quality. More information about these criteria and the reasons why they are suggested by EPA is included in the January 9, 1998, proposal (63 FR 1561) for today's final rule.

The suggested criteria are meant to be taken in the aggregate, with a great deal of flexibility as to how each should be weighed in order to best account for watershed and other local conditions and to allow for a more tailored case-by-case analysis. The application of criteria is meant to be geographically specific. Furthermore, each criterion does not have to be met in order for a small MS4

to qualify for designation, nor should an MS4 necessarily be designated on the basis of one or two criteria alone.

EPA believes that the application of the recommended designation criteria provides an objective indicator of real and potential water quality impacts from urban runoff on both the local and watershed levels. EPA encourages the application of the recommended criteria in a watershed context, thereby allowing for the evaluation of the water quality impacts of the portions of a watershed outside of an urbanized area. For example, situations exist where the urbanized area represents a small portion of a degraded watershed, and the adjacent nonurbanized areas of the watershed have significant cumulative effects on the quality of the receiving waters.

EPA received numerous suggestions of additional criteria that should be added and reasons why some of the criteria in the proposal to today's final rule were not appropriate. EPA developed its suggested designation criteria based on findings of the NURP study and other studies that indicate pollutants of concern, including total suspended solids, chemical oxygen demand, and temperature. These criteria were the subject of considerable discussion by the Storm Water Phase II FACA Subcommittee. EPA developed them in response to recommendations from the subcommittee during development of the proposed rule. The listed criteria are only suggestions. Permitting authorities are required to develop their own criteria. EPA has not found any reason to change its suggested list of criteria and the suggestions remain as proposed.

b. Apply Designation Criteria

After customizing the designation criteria for local conditions, the permitting authority must apply such criteria, at a minimum, to any MS4 located outside of an urbanized area serving a jurisdiction with a population of at least 10,000 and a population density of 1,000 people per square mile or greater (see § 123.35(b)(2)). If the NPDES permitting authority determines that an MS4 meets the criteria, the permitting authority must designate it as a regulated small MS4. This designation must occur within 3 years of publication of today's final rule. Alternatively, the NPDES authority can designate within 5 years from the date of final regulation if the designation criteria are applied on a watershed basis where a comprehensive watershed plan exists (a comprehensive watershed plan is one that includes the equivalents of TMDLs) (see § 123.35(b)(3)). The extended 5 year deadline is intended to provide incentives for watershed-based designations. If an NPDES-authorized State or Tribe does not develop and apply designation criteria within this timeframe, then EPA has the opportunity to do so in lieu of the authorized State or Tribe.

NPDES permitting authorities can designate any small MS4, including one below 10,000 in population and 1,000 in density. EPA established the 10,000/1,000 threshold based on the likelihood of adverse water quality impacts at these population and density levels. In addition, the 1,000 persons per square mile threshold is consistent with both the Bureau of the Census definition of an ''urbanized area'' (see Section II.H.2. below) and stakeholder discussions concerning the definition of a regulated small MS4.

One commenter requested that EPA develop interim deadlines for development of designation criteria. EPA believes that the designation deadline identified in today's final rule at § 123.35(b)(3) provides States and Tribes with a flexibility that allows them to develop and apply the criteria locally in a timely fashion, while at the same time establishing an expeditious deadline.

c. Designate Physically Interconnected Small MS4s

In addition to applying criteria on a local basis for potential designation, the NPDES permitting authority must designate any MS4 that contributes substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer that is regulated by the NPDES program for storm water discharges (see § 123.35(b)(4)). To be ''physically interconnected,'' the MS4 of one entity, including roads with drainage systems and municipal streets, is physically connected directly to the municipal separate storm sewer of another entity. This provision applies to all MS4s located outside of an urbanized area. EPA added this section in recognition of the concerns of local government stakeholders that a local government should not have to shoulder total responsibility for a storm water program when storm water discharges from another MS4 are also contributing pollutants or adversely affecting water quality. This provision also helps to provide some consistency among MS4 programs and to facilitate watershed planning in the implementation of the NPDES storm water program. EPA recommended physical interconnectedness in the existing NPDES storm water regulations as a factor for consideration in the designation of additional sources.

Today's final rule does not include interim deadlines for identifying physically interconnected MS4s. However, consistent with the deadlines identified in § 123.35(b)(3) of today's final rule, EPA encourages the permitting authority to make these determinations within 3 years from the date of publication of the final rule or within 5 years if the permitting authority is implementing a comprehensive watershed plan. Alternatively, the affected jurisdiction could use the petition process under 40 CFR 122.26(f) in seeking to have the permitting authority designate the contributing jurisdiction.

Several commenters expressed concerns about who could be designated under this provision (§ 123.35(b)(4)). One commenter requested that the word ''substantially'' be deleted from the rule because they believe any MS4 that contributes at all to a physically interconnected municipal separate storm sewer should be regulated. EPA believes that the word ''substantially'' provides necessary flexibility to the permitting authorities. The permitting authority can decide if an MS4 is contributing discharges to another municipal separate storm sewer in a manner that requires regulation. If the operator of a regulated municipal separate storm sewer believes that some of its pollutant loadings are coming from an unregulated MS4, it can petition the permitting authority to designate the unregulated MS4 for regulation.

d. Respond to Public Petitions for Designation

Today's final rule reiterates the existing opportunity for the public to petition the permitting authority for designation of a point source to be regulated to protect water quality. The petition opportunity also appears in existing NPDES regulations at 40 CFR 122.26(f). Any person may petition the permitting authority to require an NPDES permit for a discharge composed entirely of storm water that contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States (see § 123.32(b)). The NPDES permitting authority must make a final determination on any petition within 180 days after receiving the petition (see § 123.35(c)). EPA believes that a 180 day limit balances the public's need for a timely final determination with the NPDES permitting authority's need to prioritize its workload. If an NPDES-approved State or Tribe fails to act

within the 180-day timeframe, EPA may make a determination on the petition. EPA believes that public involvement is an important component of the NPDES program for storm water and feels that this provision encourages public participation. Section II.K, Public Involvement/Public Role, further discusses this topic.

3. Provide Waivers

Today's rule provides two opportunities for the NPDES permitting authority to exempt certain small MS4s from the need for a permit based on water quality considerations. See §§ 122.32(d) and (e). The two waiver opportunities have different size thresholds and take different approaches to considering the water quality impacts of discharges from the MS4.

In the proposal, EPA requested comment on the option of waiving coverage for all MS4s with less than 1,000 people unless the permitting authority determined that the small MS4 should be regulated based on significant adverse water quality impacts. A number of commenters supported this option. They expressed concern that compliance with the rule requirements and certification of one of the waiver provisions were both costly for very small communities. They stated that the permitting authority should identify a water quality problem before requiring compliance. Today's rule essentially adopts this alternative approach for MS4s serving a population under 1,000.

The final rule has expanded the waiver provision that EPA proposed for small MS4s with a population less than 1,000. The proposed rule would have required a small MS4 operator to certify that storm water controls are not needed based on either wasteload allocations that are part of TMDLs that address the pollutants of concern, or a comprehensive watershed plan implemented for the waterbody that includes the equivalents of TMDLs and addresses the pollutant(s) of concern. Commenters noted that the proposed waivers would be unattainable if a TMDL or equivalent analysis was required for every pollutant that could possibly be present in any amount in discharges from an MS4 regardless of whether the pollutant is causing water quality impairment. Commenters asked that EPA identify what constitutes the ''pollutant(s) of concern'' for which a TMDL or its equivalent must be developed. For example, § 122.30(c) indicates that the MS4 program is intended to control ''sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.'' Commenters asked whether TMDLs or equivalent analyses have to address all of these.

EPA has revised the proposed waiver in response to these concerns. Under today's rule, NPDES permitting authorities may waive the requirements of today's rule for any small MS4 with a population less than 1,000 that does not contribute substantially to the pollutant loadings of a physically interconnected MS4, unless the small MS4 discharges pollutants that have been identified as a cause of impairment of the waters to which the small MS4 discharges. If the small MS4 does discharge pollutants that have been identified as impairing the water body into which the small MS4 discharges, the NPDES permitting authority may grant a waiver only if it determines that storm water controls are not needed based on an EPA approved or established TMDL that addresses the pollutant(s) of concern.

Unlike the proposed rule, § 122.32(d) does not allow the waiver for MS4s serving a population under 1,000 to be based on ''the equivalent of a TMDL.'' Because § 122.32(d) requires a pollutant specific analysis only for a pollutant that has been identified as a cause of impairment, a TMDL is required for such pollutant before the waiver may be granted. Once a pollutant has been identified as the cause of impairment of a water body, the State should develop a TMDL for that pollutant for that water body. Thus, § 122.32(d) takes a different approach than that taken for the waiver in § 122.32(e) for MS4s serving a population under 10,000, which can be based upon an analysis that is ''the equivalent of a TMDL.'' This is because § 122.32(d) requires an analysis to support the waiver for MS4s under 1,000 only if a waterbody to which the MS4 discharges has been identified as impaired. The § 122.32(e) waiver, on the other hand, would be available for larger MS4s but only after the State affirmatively establishes lack of impairment based upon a comprehensive analysis of smaller urban waters that might not otherwise be evaluated for the purposes of CWA section 303. Since § 122.32(e) requires the analysis of waters that have not been identified as impaired, an actual TMDL is not required and an analysis that is the equivalent of a TMDL can suffice to support the waiver.

Where a State is the NPDES permitting authority, the permitting authority is responsible for the development of the TMDLs as well as the assessment of the extent to which a small MS4's discharge contributes pollutants to a neighboring regulated system. In States where EPA is the permitting authority, EPA will use a State's TMDLs to determine whether storm water controls are required for the small MS4s.

The proposed rule would have required the operator of the small MS4 serving a population under 1,000 to certify that its discharge was covered under a TMDL that indicated that discharges from its particular system were not having an adverse impact on water quality (*i.e.,* it was either not assigned wasteload allocations under TMDLs or its discharge is within an assigned allocation). Many commenters expressed concerns that MS4 operators serving less than 1,000 persons may lack the technical capacity to certify that their discharges are not contributing to adverse water quality impacts. These commenters thought that the permitting authority should make such a certification. Today's rule provides flexibility as to how the waiver is administered. Permitting authorities are ultimately responsible for granting the waiver, but are free to determine whether or not to require small MS4 operators that are seeking waivers to submit information or a written certification.

Under § 122.32(e) a State may grant a waiver to an MS4 serving a population between 1,000 and 10,000 only if the State has made a comprehensive effort to ensure that the MS4 will not cause or contribute to water quality impairment. To grant a § 122.32(e) waiver, the NPDES permitting authority must evaluate all waters of the U.S. that receive a discharge from the MS4 and determine that storm water controls are not needed. The permitting authority's evaluation must be based on wasteload allocations that are part of an EPA approved or established TMDL or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern. The pollutants of concern that the permitting authority must evaluate include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4. Finally, the permitting authority must have determined that future discharges from the MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant

water quality impacts, including habitat and biological impacts.

Although EPA did not propose this specific approach, the Agency did request comment on whether to increase the proposed 1,000 population threshold for a waiver. The § 122.32(e) waiver was developed in response to comments, including States' concerns that they needed greater flexibility to focus their efforts on MS4s that were causing water quality impairment. Several commenters thought that the threshold should be increased from 1,000 to 5,000 or 10,000. Others suggested additional ways of qualifying for a waiver for MS4s that discharge to waters that are not covered by a TMDL or watershed plan. EPA carefully considered all the options for expanding the waiver provisions and has decided to expand the waiver only in the very narrow circumstances described above where a comprehensive analysis has been undertaken to demonstrate that the MS4 is not causing water quality impairment.

The NPDES permitting authority can, at any time, mandate compliance with program requirements from a previously waived small MS4 if circumstances change. For example, a waiver can be withdrawn in circumstances where the permitting authority later determines that a waived small MS4's storm water discharge to a small stream will cause adverse impacts to water quality or significantly interfere with attainment of water quality standards. A ''change in circumstances'' could involve receipt of new information. Changed circumstances can also allow a regulated small MS4 operator to request a waiver at any time.

Some commenters expressed concerns about allowing any small MS4 waivers. One commenter stated that storm water pollution prevention plans are necessary to control storm water pollution and should be required from all regulated small MS4s. For the reasons stated in the Background section above, EPA agrees that the discharges from most MS4s in urbanized areas should be addressed by a storm water management program outlined in today's rule. For MS4s serving very small areas, however, the TMDL development process provides an opportunity to determine whether an MS4 serving a population less than 1,000 is having a negative impact on any receiving water that is impaired by a pollutant that the MS4 discharges. MS4s serving populations up to 10,000 may receive a waiver only if a comprehensive analysis of its impact on receiving water has been performed.

Other commenters said that waivers should not be allowed for small MS4s that discharge into another regulated MS4. These commenters stated that the word ''substantially'' should be removed from § 122.32(d)(i) so that a waiver would not be allowed for any system ''contributing to the storm water pollutant loadings of a physically interconnected regulated MS4.'' As previously mentioned under the designation discussion of section II.G.2.c, EPA believes that the word ''substantially'' provides needed flexibility to the permitting authorities. It is important to note that this is only one aspect that the permitting authority must consider when deciding on the appropriateness of a waiver.

4. Issue Permits

NPDES permitting authorities have a number of responsibilities regarding the permit process. Sections 123.35(d) through (g) ensure a certain level of consistency for permits, yet provide numerous opportunities for flexibility. NPDES permitting authorities must issue NPDES permits to cover municipal sources to be regulated under § 122.32, unless waived under § 122.32(c). EPA encourages permitting authorities to use general permits as the vehicle for permitting and regulating small MS4s. The Agency notes, however, that some operators may wish to take advantage of the option to join as a co-permittee with an MS4 regulated under the existing NPDES storm water program.

Today's final rule includes a provision, § 123.35(f), that requires NPDES permitting authorities to either include the requirements in § 122.34 for NPDES permits issued for regulated small MS4s or to develop permit limits based on a permit application submitted by a small MS4. See Section II.H.3.a, Minimum Control Measures, for more details on the actual § 122.34 requirements. See Section II.H.3.c for alternative and joint permitting options.

In an attempt to avoid duplication of effort, § 122.34(c) allows NPDES permitting authorities to include permit conditions that direct an MS4 to meet the requirements of a qualifying local, Tribal, or State municipal storm water management program. For a local, Tribal, or State program to ''qualify,'' it must impose, at a minimum, the relevant requirements of § 122.34(b). A regulated small MS4 must still follow the procedural requirements for an NPDES permit (*i.e.,* submit an application, either an individual application or an NOI under a general permit) but will instead follow the substantive pollutant control requirements of the qualifying local, Tribal, or State program.

Under § 122.35(b), NPDES permitting authorities may also recognize existing responsibilities among governmental entities for the minimum control measures in an NPDES small MS4 storm water permit. For example, the permit might acknowledge the existence of a State administered program that addresses construction site runoff and require that the municipalities only develop substantive controls for the remaining minimum control measures. By acknowledging existing programs, this provision is meant to reduce the duplication of efforts and to increase the flexibility of the NPDES storm water program.

Section 123.35(e) of today's final rule requires permitting authorities to specify a time period of up to 5 years from the issuance date of an NPDES permit for regulated small MS4 operators to fully develop and implement their storm water programs. As discussed more fully below, permitting authorities should be providing extensive support to the local governments to assist them in developing and implementing their programs.

In the proposed rule, EPA stated that the permitting authority would develop the menu of BMPs and if they failed to do so, EPA would develop the menu. Commenters felt that EPA should develop a menu of BMPs, rather than just providing guidance. In the settlement agreement for seeking an extension to the deadline for issuing today's rule, EPA committed to developing a menu of BMPs by October 27, 2000. Permitting authorities can adopt EPA's menu or develop their own. The menu itself is not intended to replace more comprehensive BMP guidance materials. As part of the tool box efforts, EPA will provide separate guidance documents that discuss the results from EPA-sponsored nationwide studies on the design, operation and maintenance of BMPs. Additionally, EPA expects that the new rulemaking on construction BMPs may provide more specific design, operation and maintenance criteria.

5. Support and Oversee the Local Programs

NPDES permitting authorities are responsible for supporting and overseeing the local municipal programs. Section 123.35(h) of today's final rule highlights issues associated with these responsibilities.

To the extent possible, NPDES permitting authorities should provide financial assistance to MS4s, which

often have limited resources, for the development and implementation of local programs. EPA recognizes that funding for programs at the State and Tribal levels may also be limited, but strongly encourages States and Tribes to provide whatever assistance is possible. In lieu of actual dollars, NPDES permitting authorities can provide cost-cutting assistance in a number of ways. For example, NPDES permitting authorities can develop outreach materials for MS4s to distribute or the NPDES permitting authority can actually distribute the materials. Another option is to implement an erosion and sediment control program across an entire State (or Tribal land), thus alleviating the need for the MS4 to implement its own program. The NPDES permitting authority must balance the need for site-specific controls, which are best handled by a local MS4, with its ability to offer financial assistance. EPA, States, Tribes, and MS4s should work as a team in making these kinds of decisions.

NPDES permitting authorities are responsible for overseeing the local programs. Permitting authorities should work with the regulated community and other stakeholders to assist in local program development and implementation. This might include sharing information, analyzing reports, and taking enforcement actions, as necessary. NPDES permitting authorities play a vital role in supporting local programs by providing technical and programmatic assistance, conducting research projects, and monitoring watersheds. The NPDES permitting authority can also assist the MS4 permittee in obtaining adequate legal authority at the local level in order to implement the local component of the CWA section 402(p)(6) program.

NPDES permitting authorities are encouraged to coordinate and utilize the data collected under several programs. States and Tribes address point and nonpoint source storm water discharges through a variety of programs. In developing programs to carry out CWA section 402(p)(6), EPA recommends that States and Tribes coordinate all of their water pollution evaluation and control programs, including the continuing planning process under CWA section 303(e), the existing NPDES program, the CZARA program, and nonpoint source pollution control programs.

In addition, NPDES permitting authorities are encouraged to provide a brief (*e.g.,* two-page) reporting format to facilitate compilation and analysis of data from reports submitted under § 122.34(g)(3). EPA intends to develop a model form for this purpose.

H. Municipal Role

1. Scope of Today's Rule

Today's final rule attempts to establish an equitable and comprehensive four-pronged approach for the designation of municipal sources. First, the approach defines for automatic coverage the municipal systems believed to be of highest threat to water quality. Second, the approach designates municipal systems that meet a set of objective criteria used to measure the potential for water quality impacts. Third, the approach designates on a case-by-case basis municipal systems that ''contribute substantially to the pollutant loadings of a physically-interconnected [regulated] MS4.'' Finally, the approach designates on a case-by-case basis, upon petition, municipal systems that ''contribute to a violation of a water quality standard or are a significant contributor of pollutants.''

Today's final rule automatically designates for regulation small MS4s located in urbanized areas, and requires that NPDES permitting authorities examine for potential designation, at a minimum, a particular subset of small MS4s located outside of urbanized areas. Today's rule also includes provisions that allow for waivers from the otherwise applicable requirements for the smallest MS4s that are not causing impairment of a receiving water body. Qualifications for the waivers vary depending on whether the MS4 serves a population under 1,000 or a population under 10,000. See §§ 122.32(d) and (e). These waivers are discussed further in section II.G.3. Any small MS4 automatically designated by the final rule or designated by the permitting authority under today's final rule is defined as a ''regulated'' small MS4 unless it receives a waiver.

In today's final rule, all regulated small MS4s must establish a storm water discharge control program that meets the requirements of six minimum control measures. These minimum control measures are public education and outreach on storm water impacts, public involvement participation, illicit discharge detection and elimination, construction site storm water runoff control, post-construction storm water management in new development and redevelopment, and pollution prevention/good housekeeping for municipal operations.

Today's rule allows for a great deal of flexibility in how an operator of a regulated small MS4 is authorized to discharge under an NPDES permit, by providing various options for obtaining permit coverage and satisfying the required minimum control measures. For example, the NPDES permitting authority can incorporate by reference qualifying State, Tribal, or local programs in an NPDES general permit and can recognize existing responsibilities among different governmental entities for the implementation of minimum control measures. In addition, a regulated small MS4 can participate in the storm water management program of an adjoining regulated MS4 and can arrange to have another governmental entity implement a minimum control measure on their behalf.

2. Municipal Definitions

a. Municipal Separate Storm Sewer Systems (MS4s)

The CWA does not define the term ''municipal separate storm sewer.'' EPA defined municipal separate storm sewer in the existing storm water permit application regulations to mean, in part, a conveyance or system of conveyances (including roads with drainage systems and municipal streets) that is ''owned or operated by a State, city, town borough, county, parish, district, association, or other public body * * * designed or used for collecting or conveying storm water which is not a combined sewer and which is not part of a Publicly Owned Treatment Works as defined at 40 CFR 122.2'' (see § 122.26(b)(8)(i)). Section 122.26 contains definitions of medium and large municipal separate storm sewer systems but no definition of a municipal separate storm sewer *system,* even though the term MS4 is commonly used. In today's rule, EPA is adding a definition of municipal separate storm sewer system and small municipal separate storm sewer system along with the abbreviations MS4 and small MS4.

The existing municipal permit application regulations define ''medium'' and ''large'' MS4s as those located in an incorporated place or county with a population of at least 100,000 (medium) or 250,000 (large) as determined by the latest Decennial Census (see §§ 122.26(b)(4) and 122.26(b)(7)). In today's final rule, these regulations have been revised to define all medium and large MS4s as those meeting the above population thresholds according to the 1990 Decennial Census.

Today's rule also corrects the titles and contents of Appendices F, G, H,& I to Part 122. EPA is adding those incorporated places and counties whose 1990 population caused them to be defined as a ''medium'' or ''large'' MS4. All of these MS4s have applied for

permit coverage so the effect of this change to the appendices is simply to make them more accurate. They will not need to be revised again because today's rule ''freezes'' the definition of ''medium'' and ''large'' MS4s at those that qualify based on the 1990 census.

EPA received several comments supporting and opposing the proposal to ''freeze'' the definitions based on the 1990 census. Commenters who disagreed with EPA's position cited the unfairness of municipalities that reach the medium or large threshold at a later date having fewer permitting requirements compared to those that were already at the population thresholds when the existing storm water regulations took effect. EPA recognizes this disparity but does not believe it is unfair, as explained in the proposed rule. The decision was based on the fact that the deadlines from the existing regulations have lapsed, and because the permitting authority can always require more from operators of MS4s serving ''newly over 100,000'' populations.

b. Small Municipal Separate Storm Sewer Systems

The proposal to today's final rule added ''the United States'' as a potential owner or operator of a municipal separate storm sewer. This addition was intended to address an omission from existing regulations and to clarify that federal facilities are, in fact, covered by the NPDES program for municipal storm water discharges when the federal facility is like other regulated MS4s. EPA received a comment that this change would cause federal facilities located in Phase 1 areas to be considered Phase 1 dischargers due to the definition of medium and large MS4s. All MS4s located in Phase 1 cities or counties are defined as Phase 1 medium or large MS4s. EPA believes that all federal facilities serve a population of under 100,000 and should be regulated as small MS4s. Therefore, in § 122.26(a)(16) of today's final rule, EPA is adding federal facilities to the NPDES storm water discharge control program by changing the proposed definition of small municipal separate storm sewer system. Paragraph (i) of this section restates the definition of municipal separate storm sewer with the addition of ''the United States'' as a owner or operator of a small municipal separate storm sewer. Paragraph (ii) repeats the proposed language that states that a small MS4 is a municipal separate storm sewer that is not medium or large.

Most commenters agreed that federal facilities should be covered in the same way as other similar MS4s. However, EPA received several comments asking whether individual federal buildings such as post offices or urban offices of the U.S. Park Service must apply for coverage as regulated small MS4s. Most of these buildings have, at most, a parking lot with runoff or a storm sewer that connects with a municipality's MS4. In § 122.26(a)(16)(iii), EPA clarifies that the definition of small MS4 does not include individual buildings. These buildings may have a municipal separate storm sewer but they do not have a ''system'' of conveyances. The minimum measures for small MS4s were written to apply to storm sewer ''systems'' providing storm water drainage service to human populations and not to individual buildings. This is true of municipal separate storm sewers from State buildings as well as from federal buildings.

There will likely be situations where the permitting authority must decide if a federal or State complex should be regulated as a small MS4. A federal complex of two or three buildings could be treated as a single building and not be required to apply for coverage. In these situations, permitting authorities will have to use their best judgment as to the nature of the complex and its storm water conveyance system. Permitting authorities should also consider whether the federal or State complex cooperates with its municipality's efforts to implement their storm water management program.

Along with the questions about individual buildings, EPA received many questions about how various provisions of the rule should be interpreted for federal and State facilities. EPA acknowledges that federal and State facilities are different from municipalities. EPA believes, however, that the minimum measures are flexible enough that they can be implemented by these facilities. As an example, DOD commenters asked about how to interpret the term ''public'' for military installations when implementing the public education measure. EPA agrees with the suggested interpretation of ''public'' for DOD facilities as ''the resident and employee population within the fence line of the facility.''

EPA also received many comments from State departments of transportation (DOTs) that suggested the ways in which they are different from municipalities and should therefore be regulated differently. Storm water discharges from State DOTs in Phase 1 areas should already be regulated under Phase I. The preamble to Phase 1 clearly states that ''all systems within a geographical area including highways and flood control districts will be covered.'' Many permitting authorities regulated State DOTs as co-permittees with the Phase 1 municipality in which the highway is located. State DOTs that are already regulated under Phase I are not required to comply with Phase II. State DOTs that are not already regulated have various options for meeting the requirements of today's rule. These options are discussed in Section II.H.3.c.iv below. Several DOTs commented that some of the minimum measures are outside the scope of their mission or that they do not have the legal authority required for implementation. EPA believes that the flexibility of the minimum measures allows them to be implemented by most MS4s, including DOTs. When a DOT does not have the necessary legal authority, EPA encourages the DOT to coordinate their storm water management efforts with the surrounding municipalities and other State agencies. Under today's rule, DOTs can use any of the options of § 122.35 to share their storm water management responsibilities. DOTs may also want to work with their permitting authority to develop a State-wide DOT storm water permit.

There are many storm water discharges from State DOTs and other State MS4s located in Phase 1 areas that were not regulated under Phase 1. Today's rule adds many more State facilities as well as all federal facilities located in urbanized areas. All of these State and federal facilities that fit the definition of a small MS4 must be covered by a storm water management program. The individual permitting authorities must decide what type of permit is most applicable.

The existing NPDES storm water program already regulates storm water from federally or State-operated industrial sources. Federal or State facilities that are currently regulated due to their industrial discharges may already be implementing some of today's rule requirements.

EPA received comments that questioned the apparent inconsistency between regulating a federal facility such as a hospital and not regulating a similar private facility. Normally, this type of private facility is regulated by the MS4. EPA believes that federal facilities are subject to local water quality regulations, including storm water requirements, by virtue of the waiver of sovereign immunity in CWA section 313. However, there are special problems faced by MS4s in their efforts to regulate federal facilities that have not been encountered in regulating

similar private facilities. To ensure comprehensive coverage, today's rule merely clarifies the need for permit coverage for these federal facilities.

i. Combined Sewer Systems (CSS). The definition of small MS4s does not include combined sewer systems. A combined sewer system is a wastewater collection system that conveys sanitary wastewater and storm water through a single set of pipes to a publicly-owned treatment works (POTW) for treatment before discharging to a receiving waterbody. During wet weather events when the capacity of the combined sewer system is exceeded, the system is designed to discharge prior to the POTW treatment plant directly into a receiving waterbody. Such an overflow is a combined sewer overflow or CSO. Combined sewer systems are not subject to existing regulations for municipal storm water discharges, nor will they be subject to today's regulations. EPA addresses combined sewer systems and CSOs in the National Combined Sewer Overflow (CSO) Control Policy issued on April 19, 1994 (59 FR 18688). The CSO Control Policy contains provisions for developing appropriate, site-specific NPDES permit requirements for combined sewer systems. CSO discharges are subject to limitations based on the best available technology economically achievable for toxic pollutants and based on the best conventional pollutant control technology for conventional pollutants. MS4s are subject to a different technology standard for all pollutants, specifically to reduce pollutants to the maximum extent practicable.

Some municipalities are served by both separate storm sewer systems and combined sewer systems. If such a municipality is located within an urbanized area, only the separate storm sewer systems within that municipality is included in the NPDES storm water program and subject to today's final rule. If the municipality is not located in an urbanized area, then the NPDES permitting authority has discretion as to whether the discharges from the separate storm sewer system is subject to today's final rule. The NPDES permitting authority will use the same process to designate discharges from portions of an MS4 for permit coverage where the municipality is also served by a combined sewer system.

EPA recognizes that municipalities that have both combined and separate storm sewer systems may wish to find ways to develop a unified program to meet all wet weather water pollution control requirements more efficiently. In the proposal to today's final rule, EPA sought comment on ways to achieve such a unified program. Many municipalities that are served by CSSs and MS4s commented that it is inequitable to force them to comply with Phase II at this time because implementation of the CSO Control Policy through their NPDES permits already imposes a significant financial burden. They requested an extension of the implementation time frame. They did not provide ideas on how to unify the two programs. EPA encourages permitting authorities to work with these municipalities as they develop and begin implementation of their CSO and storm water management programs. If both sets of requirements are carefully coordinated early, a cost-effective wet weather program can be developed that will address both CSO and storm water requirements.

ii. Owners/Operators. Several commenters mentioned the difference between the existing storm water application requirement for municipal operators and the proposed municipal requirement for owners or operators to apply. They felt that this inconsistency is confusing. The preamble to the existing regulations makes numerous references to owner/operator so there was no intent to make a clear distinction between Phase I and Phase II. Section 122.21(b) states that when the owner and operator are different, the operator must obtain the permit. MS4s often have several operators. The owner may be responsible for one part of the system and a regional authority may be responsible for other aspects. EPA proposed the ''owner or operator'' language to convey this dual responsibility. However, when the owner is responsible for some part of a storm water management plan, it is also an operator.

EPA has revised the regulation language to clarify that ''an operator'' must apply for a permit. When responsibilities for the MS4 are shared, all operators must apply.

c. Regulated Small MS4s

In today's final rule, all small MS4s located in an urbanized area are automatically designated as ''regulated'' small MS4s provided that they were not previously designated into the existing storm water program. Unlike medium and large MS4s under the existing storm water regulations, not all small MS4s are designated under today's final rule. Therefore, today's rule distinguishes between ''small'' MS4s and ''regulated small'' MS4s.

EPA's definition of ''regulated small MS4s'' in the proposal to today's rule included mention of incorporated places and counties. Along with the definition, EPA included Appendices 6 and 7 to assist in the identification of areas that would probably require coverage as ''automatically designated'' (Appendix 6) or ''potentially designated'' (Appendix 7). The definition and the appendices raised many questions about exactly who was required to comply with the proposed requirements. Commenters raised issues about the definition of ''incorporated place'' and the status of towns, townships, and other places that are not considered incorporated by the Census Bureau. They also asked about special districts, regional authorities, MS4s already regulated, and other questions in order to clarify the rule's coverage.

EPA has revised § 122.32(a) to clarify that discharges are regulated under today's rule if they are from a small MS4 that is in an urbanized area and has not received a waiver or they are designated by the permitting authority. Today's rule does not regulate the county, city, or town. Today's rule regulates the MS4. Therefore, even though a county may be listed in Appendix 6, if that county does not own or operate the municipal storm sewer systems, the county does not have to submit an application or develop a storm water management program. If another entity does own or operate an MS4 within the county, for example, a regional utility district, that other entity needs to submit the application and develop the program.

Some commenters suggested that EPA should change the rule language to specifically allow regional authorities to be the permitted entity and to allow small MS4s to apply as co-permittees. EPA believes that the best way to clarify that regional authorities can be the primary permitted entity is the change to § 122.32(a) and the explanation above. Because EPA assumes that today's regulation will be implemented through general permits, MS4s will not be co-permittees under a general permit in the same manner as under individual permits. EPA has added § 122.33(a)(4) and made a minor change to § 122.35(a) to clarify that small MS4s can work together to share the responsibilities of a storm water management program. This is discussed further in Section II.H.3.c.iv below.

The proposed rule stated that when a county or Federal Indian reservation is only partially included in an urbanized area, only MS4s in the urbanized portion of the county or Federal Indian reservation would be regulated. In the rare cases when an incorporated place is only partially included in the urbanized area, the entire incorporated place would be regulated. EPA received comments asking about towns and

townships, because they were not considered to be incorporated areas according to the Census Bureau's definition. Would the whole town/township be covered or only the part of the town/township in the urbanized area? States use many different types of systems in their geographical divisions. Some towns are similar to incorporated cities and others are large areas that are more similar to counties. Some commenters thought that the urbanized area boundary was arbitrary, and if part of a town or county was covered, it all should be covered. Other commenters noted that some townships and counties encompass very large areas of which only a small portion is urbanized. Due to the great variety of situations, EPA has decided that for all geographical entities, only MS4s in the urbanized area are automatically designated. The population densities associated with the Census Bureau's designation of urbanized areas provide the basis for designation of these areas to protect water quality. This focused designation provides for consistency and allows for flexibility on the part of the MS4 and the permitting authority. In those situations where an incorporated place or a town is not all in an ''urbanized area'', there is a good possibility that it is served by more than one MS4. In those cases where the area is served by the same MS4, it makes sense to develop a storm water program for the whole area. Permitting authorities may also decide to designate all MS4s within a county or township, if they believe it is necessary to protect water quality.

Most operators of MS4s will not need to independently determine the status of coverage under today's rule. EPA has revised the proposed Appendices 6 and 7 to include towns and townships. Therefore, these appendices will alert most MS4s as to whether they are likely to be covered under today's rule. However, each permitting authority must make the decision as to who requires coverage. Most likely, an illustrative list of the regulated areas will be published with the general permit. If not, the operator can contact its permitting authority or the Bureau of the Census to find out if their separate storm sewer systems are within an urbanized area.

i. Urbanized Area Description. Under the Bureau of the Census definition of ''urbanized area,'' adopted by EPA for the purposes of today's final rule, ''an urbanized area (UA) comprises a place and the adjacent densely settled surrounding territory that together have a minimum population of 50,000 people.'' The proposal to today's rule provided the full definition and case studies to help explain the census category of ''urbanized area.'' Appendix 2 is a simplified urbanized area illustration to help demonstrate the concept of urbanized areas in relation to today's final rule. The ''urbanized area'' is the shaded area that includes within its boundaries incorporated places, a portion of a Federal Indian reservation, portions of two counties, an entire town, and portions of another town. All small MS4s located in the shaded area are covered by the rule, unless and until waived by the permitting authority. Any small MS4s located outside of the shaded area are subject to potential designation by the permitting authority.

There are 405 urbanized areas in the United States that cover 2 percent of total U.S. land area and contain approximately 63 percent of the nation's population (see Appendix 3 for a listing of urbanized areas of the United States and Puerto Rico). These numbers include U.S. Territories, although Puerto Rico is the only territory to have Census-designated urbanized areas. Urbanized areas constitute the largest and most dense areas of settlement. The purpose of determining an ''urbanized area'' is to delineate the boundaries of development and map the actual built-up urban area. The Bureau of the Census geographers liken it to flying over an urban area and drawing a line around the boundary of the built-up area as seen from the air.

Using data from the latest decennial census, the Census Bureau applies the urbanized area definition nationwide (including U.S. Tribes and Territories) and determines which places and counties are included within each urbanized area. For each urbanized area, the Bureau provides full listings of who is included, as well as detailed maps and special CD-ROM files for use with computerized mapping systems (such as GIS). Each State's data center receives a copy of the list, and some maps, automatically. The States also have the CD–ROM files and a variety of publications available to them for reference from the Bureau of the Census. In addition, local or regional planning agencies may have urbanized area files already. New listings for urbanized areas based on the 2000 Census will be available by July/August 2001, but the more comprehensive computer files will not be available until late 2001/early 2002.

Additional designations based on subsequent census years will be governed by the Bureau of the Census' definition of an urbanized area in effect for that year. Based on historical trends, EPA expects that any area determined by the Bureau of the Census to be included within an urbanized area as of the 1990 Census will not later be excluded from the urbanized area as of the 2000 Census. However, it is important to note that even if this situation were to occur, for example, due to a possible change in the Bureau of the Census' urbanized area definition, a small MS4 that is automatically designated into the NPDES program for storm water under an urbanized area calculation for any given Census year will remain regulated regardless of the results of subsequent urbanized area calculations.

ii. Rationale for Using Urbanized Areas. EPA is using urbanized areas to automatically designate regulated small MS4s on a nationwide basis for several reasons: (1) studies and data show a high correlation between degree of development/ urbanization and adverse impacts on receiving waters due to storm water (U.S. EPA, 1983; Driver et al., 1985; Pitt, R.E. 1991. ''Biological Effects of Urban Runoff Discharges.'' Presented at the Engineering Foundation Conference: *Urban Runoff and Receiving Systems; An Interdisciplinary Analysis of Impact, Monitoring and Management,* August 1991. Mt. Crested Butte, CO. American Society of Civil Engineers, New York. 1992.; Pitt, R.E. 1995. ''Biological Effects of Urban Runoff Discharges,'' in *Storm water Runoff and Receiving Systems: Impact, Monitoring, and Assessment.* Lewis Publishers, New York.; Galli, J. 1990. *Thermal Impacts Associated with Urbanization and Storm water Management Best Management Practices.* Prepared for the Sediment and Storm water Administration of the Maryland Department of the Environment.; Klein, 1979), (2) the blanket coverage within the urbanized area encourages the watershed approach and addresses the problem of ''donut-holes,'' where unregulated areas are surrounded by areas currently regulated (storm water discharges from donut hole areas present a problem due to their contributing uncontrolled adverse impacts on local waters, as well as by frustrating the attainment of water quality goals of neighboring regulated communities), (3) this approach targets present and future growth areas as a preventative measure to help ensure water quality protection, and (4) the determination of urbanized areas by the Bureau of the Census allows operators of small MS4s to quickly determine whether they are included in the NPDES storm water program as a regulated small MS4.

Urbanized areas have experienced significant growth over the past 50 years. According to EPA calculations

based on Census data from 1980 to 1990, the national average rate of growth in the United States during that 10-year period was more than 4 percent. For the same period, the average growth within urbanized areas was 15.7 percent and the average for outside of urbanized areas was just more than 1 percent. The new development occurring in these growing areas can provide some of the best opportunities for implementing cost-effective storm water management controls.

EPA received many comments on the proposal to designate discharges based on location within urbanized areas. EPA considered numerous other approaches, several of which are discussed in the proposal to today's final rule. Several commenters wanted designation to be based on proven water quality problems rather than inclusion in an urbanized area. One commenter proposed an approach based on the CWA 303(d) listing of impaired waters and the wasteload allocation conducted under the TMDL process. (See section II.L. on the section 303(d) and TMDL process). The commenter's proposal would designate small MS4s on a case-by-case basis, covering only those discharges where receiving streams are shown to have water quality problems, particularly a failure to meet water quality standards, including designated uses. The commenter further described a non-NPDES approach where a State would require cost-effective measures based on a proportionate share under a waste load allocation, equitably allocated among all pollutant contributors. These waste load allocations would be developed with input from all stakeholders, and remedial measures would be implemented in a phased manner based on the probability of results and/or economic feasibility. The States would then periodically reassess the receiving streams to determine whether the remedial measures are working, and if not, require additional control measures using the same procedure used to establish the initial measures. What the commenter describes is almost a TMDL.

EPA considered a remedial approach based on water quality impairment and rejected it for failure to prevent almost certain degradation caused by urban storm water. EPA's main concern in opting not to take a case-by-case approach to designation was that this approach would not provide controls for storm water discharges in receiving streams until after a site-specific demonstration of adverse water quality impact. The commenter's suggestion would do nothing to prevent pollution in waters that may be meeting water quality standards, including supporting designated uses. The approach would also rely on identifying storm water management programs following comprehensive watershed plans and TMDL development. In most States, water quality assessments have traditionally been conducted for principal mainstream rivers and their major tributaries, not all surface waters. The establishment of TMDLs nationwide will take many years, and many States will conduct additional monitoring to determine water quality conditions prior to establishing TMDLs. In addition, a case-by-case approach would not address the problem of ''donut holes'' within urbanized areas and a lack of consistency among similarly situated municipal systems would remain commonplace. After careful consideration of all comments, EPA still believes that the approach in today's rule is the most appropriate to protect water quality. Protection includes prevention as well as remediation.

d. Municipal Designation by the Permitting Authority

Today's final rule also allows NPDES permitting authorities to designate MS4s that should be included in the storm water program as regulated small MS4s but are not located within urbanized areas. The final rule requires, at a minimum, that a set of designation criteria be applied to all small MS4s within a jurisdiction that serves a population of at least 10,000 and has a population density of at least 1,000. Appendix 7 to this preamble provides an illustrative list of places that the Agency anticipates meet this criteria. In addition, any small MS4 may be the subject of a petition to the NPDES permitting authority for designation. See Section II.G, NPDES Permitting Authority's Role for more details on the designation and petition processes. EPA believes that the approach of combining nationwide and local designation to determine municipal coverage balances the potential for significant adverse impacts on water quality with local watershed protection and planning efforts.

e. Waiving the Requirements for Small MS4s

Today's final rule includes some flexibility in the nationwide coverage of all small MS4s located in urbanized areas by providing the NPDES permitting authority with the discretion to waive the otherwise applicable requirements of the smallest MS4s that are not causing the impairment of a receiving water body. Qualifications for the waiver vary depending on whether the MS4 serves a population under 1,000 or a population between 1,000 and 10,000. Note that even if a small MS4 has requirements waived, it can subsequently be brought back into the program if circumstances change. See Section II.G, NPDES Permitting Authority's Role, for more details on this process.

3. Municipal Permit Requirements

a. Overview

i. Summary of Permitting Options. Today's rule outlines six minimum control measures that constitute the framework for a storm water discharge control program for regulated small MS4s that, when properly implemented, will reduce pollutants to the maximum extent practicable (MEP). These six minimum control measures are specified in § 122.34(b) and are discussed below in section ''II.H.3.b, Program Requirements-Minimum Control Measures.'' All operators of regulated small MS4s are required to obtain coverage under an NPDES permit, unless the requirement is waived by the permitting authority in accordance with today's rule. Implementation of § 122.34(b) may be required either through an individual permit or, if the State or EPA makes one available to the facility, through a general permit. The process for issuing and obtaining these permits is discussed below in section ''II.H.3.c, Application Requirements.''

As an alternative to implementing a program that complies with the requirements of § 122.34, today's rule provides operators of regulated small MS4s with the option of applying for an individual permit under § 122.26(d). The permit application requirements in § 122.26 were originally drafted to apply to medium and large MS4s. Although EPA believes that the requirements of § 122.34 provide a regulatory option that is appropriate for most small MS4s, the operators of some small MS4s may prefer more individualized requirements. This alternative permitting option for regulated small MS4s that wish to develop their own program is discussed below in section ''II.H.3.c.iii. Alternative Permit Option.'' The second alternative permitting option for regulated small MS4s is to become co-permittees with a medium or large MS4 regulated under § 122.26(d), as discussed below in section ''II.H.3.c.v. Joint Permit Programs.''

ii. Water Quality-Based Requirements. Any NPDES permit issued under today's rule must, at a minimum, require the operator to develop, implement, and

enforce a storm water management program designed to reduce the discharge of pollutants from a regulated system to the MEP, to protect water quality, and satisfy the appropriate water quality requirements of the Clean Water Act (see MEP discussion in the following section). Absent evidence to the contrary, EPA presumes that a small MS4 program that implements the six minimum measures in today's rule does not require more stringent limitations to meet water quality standards. Proper implementation of the measures will significantly improve water quality. As discussed further below, however, small MS4 permittees should modify their programs if and when available information indicates that water quality considerations warrant greater attention or prescriptiveness in specific components of the municipal program. If the program is inadequate to protect water quality, including water quality standards, then the permit will need to be modified to include any more stringent limitations necessary to protect water quality.

Regardless of the basis for the development of the effluent limitations (whether designed to implement the six minimum measures or more stringent or prescriptive limitations to protect water quality), EPA considers narrative effluent limitations requiring implementation of BMPs to be the most appropriate form of effluent limitations for MS4s. CWA section 402(p)(3)(b)(iii) expresses a preference for narrative rather than numeric effluent limits, for example, by reference to ''management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.'' 33 U.S.C. 1342(p)(3)(B)(iii). EPA determines that pollutants from wet weather discharges are most appropriately controlled through management measures rather than end-of-pipe numeric effluent limitations. As explained in the Interim Permitting Policy for Water Quality-Based Effluent Limitations in Storm Water Permits, issued on August 1, 1996 [61 FR 43761 (November 26, 1996), EPA believes that the currently available methodology for derivation of numeric water quality-based effluent limitations is significantly complicated when applied to wet weather discharges from MS4s (compared to continuous or periodic batch discharges from most other types of discharge). Wet weather discharges from MS4s introduce a high degree of variability in the inputs to the models currently available for derivation of water quality based effluent limitations, including assumptions about instream and discharge flow rates, as well as effluent characterization. In addition, EPA anticipates that determining compliance with any such numeric limitations may be confounded by practical limitations in sample collection.

In the first two to three rounds of permit issuance, EPA envisions that a BMP-based storm water management program that implements the six minimum measures will be the extent of the NPDES permit requirements for the large majority of regulated small MS4s. Because the six measures represent a significant level of control if properly implemented, EPA anticipates that a permit for a regulated small MS4 operator implementing BMPs to satisfy the six minimum control measures will be sufficiently stringent to protect water quality, including water quality standards, so that additional, more stringent and/or more prescriptive water quality based effluent limitations will be unnecessary.

If a small MS4 operator implements the six minimum control measures in § 122.34(b) and the discharges are determined to cause or contribute to non-attainment of an applicable water quality standard, the operator needs to expand or better tailor its BMPs within the scope of the six minimum control measures. EPA envisions that this process will occur during the first two to three permit terms. After that period, EPA will revisit today's regulations for the municipal separate storm sewer program.

If the permitting authority (rather than the regulated small MS4 operator) needs to impose additional or more specific measures to protect water quality, then that action will most likely be the result of an assessment based on a TMDL or equivalent analysis that determines sources and allocations of pollutant(s) of concern. EPA believes that the small MS4's additional requirements, if any, should be guided by its equitable share based on a variety of considerations, such as cost effectiveness, proportionate contribution of pollutants, and ability to reasonably achieve wasteload reductions. Narrative effluent limitations in the form of BMPs may still be the best means of achieving those reductions.

See Section II.L, Water Quality Issues, for further discussion of this approach to permitting, consistent with EPA's interim permitting guidance. Pursuant to CWA section 510, States implementing their own NPDES programs may develop more stringent or more prescriptive requirements than those in today's rule.

EPA's interpretation of CWA section 402(p)(3)(B)(iii) was recently reviewed by the Ninth Circuit in *Defenders of Wildlife, et al* v. *Browner,* No. 98–71080 (September 15, 1999). The Court upheld the Agency's action in issuing five MS4 permits that included water quality-based effluent limitations. The Court did, however, disagree with EPA's interpretation of the relationship between CWA sections 301 and 402(p). The Court reasoned that MS4s are not compelled by section 301(b)(1)(C) to meet all State water quality standards, but rather that the Administrator or the State may rely on section 402(p)(3)(B)(iii) to require such controls. Accordingly, the *Defenders of Wildlife* decision is consistent with the Agency's 1996 ''Interim Permitting Policy for Water Quality-Based Effluent Limitations in Storm Water Permits.''

As noted, the 1996 Policy describes how permits would implement an iterative process using BMPs, assessment, and refocused BMPs, leading toward attainment of water quality standards. The ultimate goal of the iteration would be for water bodies to support their designated uses. EPA believes this iterative approach is consistent with and implements section 301(b)(1)(C), notwithstanding the Ninth Circuit's interpretation. As an alternative to basing these water quality-based requirements on section 301(b)(1)(C), however, EPA also believes the iterative approach toward attainment of water quality standards represents a reasonable interpretation of CWA section 402(p)(3)(B)(iii). For this reason, today's rule specifies that the ''compliance target'' for the design and implementation of municipal storm water control programs is ''to reduce pollutants to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the CWA.'' The first component, reductions to the MEP, would be realized through implementation of the six minimum measures. The second component, to protect water quality, reflects the overall design objective for municipal programs based on CWA section 402(p)(6). The third component, to implement other applicable water quality requirements of the CWA, recognizes the Agency's specific determination under CWA section 402(p)(3)(B)(iii) of the need to achieve reasonable further progress toward attainment of water quality standards according to the iterative BMP process, as well as the determination that State or EPA officials who establish TMDLs could allocate waste loads to

MS4s, as they would to other point sources.

EPA does not presume that water quality will be protected if a small MS4 elects not to implement all of the six minimum measures and instead applies for alternative permit limits under § 122.26(d). Operators of such small MS4s that apply for alternative permit limits under § 122.26(d) must supply additional information through individual permit applications so that the permit writer can determine whether the proposed program reduces pollutants to the MEP and whether any other provisions are appropriate to protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act.

iii. *Maximum Extent Practicable.* Maximum extent practicable (MEP) is the statutory standard that establishes the level of pollutant reductions that operators of regulated MS4s must achieve. The CWA requires that NPDES permits for discharges from MS4s ''shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods.'' CWA Section 402(p)(3)(B)(iii). This section also calls for ''such other provisions as the [EPA] Administrator or the State determines appropriate for the control of such pollutants.'' EPA interprets this standard to apply to all MS4s, including both existing regulated (large and medium) MS4s, as well as the small MS4s regulated under today's rule.

For regulated small MS4s under today's rule, authorization to discharge may be under either a general permit or individual permit, but EPA anticipates and expects that general permits will be the most common permit mechanism. The general permit will explain the steps necessary to obtain permit authorization. Compliance with the conditions of the general permit and the series of steps associated with identification and implementation of the minimum control measures will satisfy the MEP standard. Implementation of the MEP standard under today's rule will typically require the permittee to develop and implement appropriate BMPs to satisfy each of the required six minimum control measures.

In issuing the general permit, the NPDES permitting authority will establish requirements for each of the minimum control measures. Permits typically will require small MS4 permittees to identify in their NOI the BMPs to be performed and to develop the measurable goals by which implementation of the BMPs can be assessed. Upon receipt of the NOI from a small MS4 operator, the NPDES permitting authority will have the opportunity to review the NOI to verify that the identified BMPs and measurable goals are consistent with the requirement to reduce pollutants under the MEP standard, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. If necessary, the NPDES permitting authority may ask the permittee to revise their mix of BMPs, for example, to better reflect the MEP pollution reduction requirement. Where the NPDES permit is not written to implement the minimum control measures specified under § 122.34(b), for example in the case of an individual permit under § 122.33(b)(2)(ii), the MEP standard will be applied based on the best professional judgment of the permit writer.

Commenters argued that MEP is, as yet, an undefined term and that EPA needs to further clarify the MEP standards by providing a regulatory definition that includes recognition of cost considerations and technical feasibility. Commenters argued that, without a definition, the regulatory community is not adequately on notice regarding the standard with which they need to comply. EPA disagrees that affected MS4 permittees will lack notice of the applicable standard. The framework for the small MS4 permits described in this notice provides EPA's interpretation of the standard and how it should be applied.

EPA has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. MS4s need the flexibility to optimize reductions in storm water pollutants on a location-by-location basis. EPA envisions that this evaluative process will consider such factors as conditions of receiving waters, specific local concerns, and other aspects included in a comprehensive watershed plan. Other factors may include MS4 size, climate, implementation schedules, current ability to finance the program, beneficial uses of receiving water, hydrology, geology, and capacity to perform operation and maintenance.

The pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process. Permit writers may evaluate small MS4 operator's proposed storm water management controls to determine whether reduction of pollutants to the MEP can be achieved with the identified BMPs.

EPA envisions application of the MEP standard as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards. Successive iterations of the mix of BMPs and measurable goals will be driven by the objective of assuring maintenance of water quality standards. If, after implementing the six minimum control measures there is still water quality impairment associated with discharges from the MS4, after successive permit terms the permittee will need to expand or better tailor its BMPs within the scope of the six minimum control measures for each subsequent permit. EPA envisions that this process may take two to three permit terms.

One commenter observed that MEP is not static and that if the six minimum control measures are not achieving the necessary water quality improvements, then an MS4 should be expected to revise and, if necessary, expand its program. This concept, it is argued, must be clearly part of the definition of MEP and thus incorporated into the binding and operative aspects of the rule. As is explained above, EPA believes that it is. The iterative process described above is intended to be sensitive to water quality concerns. EPA believes that today's rule contains provisions to implement an approach that is consistent with this comment.

b. Program Requirements'Minimum Control Measures

A regulated small MS4 operator must develop and implement a storm water management program designed to reduce the discharge of pollutants from their MS4 to protect water quality. The storm water management program must include the following six minimum measures.

i. Public Education and Outreach on Storm Water Impacts. Under today's final rule, operators of small MS4s must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps to reduce storm water pollution. The public education program should inform individuals and households about the problem and the steps they can take to reduce or prevent storm water pollution.

EPA believes that as the public gains a greater understanding of the storm water program, the MS4 is likely to gain

more support for the program (including funding initiatives). In addition, compliance with the program will probably be greater if the public understands the personal responsibilities expected of them. Well-informed citizens can act as formal or informal educators to further disseminate information and gather support for the program, thus easing the burden on the municipalities to perform all educational activities.

MS4s are encouraged to enter into partnerships with their States in fulfilling the public education requirement. It may be more cost-effective to utilize a State education program instead of numerous MS4s developing their own programs. MS4 operators are also encouraged to work with other organizations (e.g., environmental, nonprofit and industry organizations) that might be able to assist in fulfilling this requirement.

The public education program should be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities (particularly minority and disadvantaged communities). Examples of strategies include distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. Operators of MS4s may use storm water educational information provided by the State, Tribe, EPA, or environmental, public interest, trade organizations, or other MS4s. Examples of successful public education efforts concerning polluted runoff can be found in many State nonpoint source pollution control programs under CWA section 319.

The public education program should inform individuals and households about steps they can take to reduce storm water pollution, such as ensuring proper septic system maintenance, ensuring the use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. Additionally, the program could inform individuals and groups on how to become involved in local stream and beach restoration activities as well as activities coordinated by youth service and conservation corps and other citizen groups. Finally, materials or outreach programs should be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant storm water impacts. For example, MS4 operators should provide information to restaurants on the impact of grease clogging storm drains and to auto garages on the impacts of used oil discharges.

EPA received comments from representatives of State DOTs and U.S. Department of Defense (DOD) installations seeking exemption from the public education requirement. While today's rule does not exempt DOTs and military bases from the user education requirement, the Agency believes the flexibility inherent in the Rule addresses many of the concerns expressed by these commenters.

Certain DOT representatives commented that if their agencies were not exempt from the user education measure's requirements, they should at least be allowed to count DOT employee education as an adequate substitute. EPA supports the use of existing materials and programs, granted such materials and programs meet the rule's requirement that the MS4 user community (*i.e.,* the public) is also educated concerning the impacts of storm water discharges on water bodies and the steps to reduce storm water pollution.

Finally, certain DOD representatives requested that ''public,'' as applied to their installations, be defined as the resident and employee populations within the fence line of the facility. EPA agrees that the education effort should be directed toward those individuals who frequent the federally owned land (*i.e.,* residents and individuals who come there to work and use the MS4 facilities).

EPA also received a number of comments from municipalities stating that education would be more thorough and cost effective if accomplished by EPA on the national level. EPA believes that a collaborative State and local approach, in conjunction with significant EPA technical support, will best meet the goal of targeting, and reaching, specific local audiences. EPA technical support will include a tool box which will contain fact sheets, guidance documents, an information clearinghouse, and training and outreach efforts.

Finally, EPA received comments expressing concern that the public education program simply encourages the distribution of printed material. EPA is sensitive to this concern. Upon evaluation, the Agency made changes to the proposal's language for today's rule. The language has been changed to reflect EPA's belief that a successful program is one that includes a variety of strategies locally designed to reach specific audiences.

ii. Public Involvement/Participation. Public involvement is an integral part of the small MS4 storm water program. Accordingly, today's final rule requires that the municipal storm water management program must comply with applicable State and local public notice requirements. Section 122.34(b)(2) recommends a public participation process with efforts to reach out and engage all economic and ethnic groups. EPA believes there are two important reasons why the public should be allowed and encouraged to provide valuable input and assistance to the MS4's program.

First, early and frequent public involvement can shorten implementation schedules and broaden public support for a program. Opportunities for members of the public to participate in program development and implementation could include serving as citizen representatives on a local storm water management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. Moreover, members of the public may be less likely to raise legal challenges to a MS4's storm water program if they have been involved in the decision making process and program development and, therefore, internalize personal responsibility for the program themselves.

Second, public participation is likely to ensure a more successful storm water program by providing valuable expertise and a conduit to other programs and governments. This is particularly important if the MS4's storm water program is to be implemented on a watershed basis. Interested stakeholders may offer to volunteer in the implementation of all aspects of the program, thus conserving limited municipal resources.

EPA recognizes that there are a number of challenges associated with public involvement. One challenge is in engaging people in the public meeting and program design process. Another challenge is addressing conflicting viewpoints. Nevertheless, EPA strongly believes that these challenges can be addressed by use of an aggressive and inclusive program. Section II.K. provides further discussion on public involvement.

A number of municipalities sought clarification from EPA concerning what the public participation program must

actually include. In response, the actual requirements are minimal, but the Agency's *recommendations* are more comprehensive. The public participation program must only comply with applicable State and local public notice requirements. The remainder of the preamble, as well as the Explanatory Note accompanying the regulatory text, provide guidance to the MS4s concerning what elements a successful and inclusive program should include. EPA will provide technical support as part of the tool box (*i.e.,* providing model public involvement programs, conducting public workshops, *etc.*) to assist MS4 operators meet the intent of this measure.

Finally, the Agency encourages MS4s to seek public participation prior to submitting an NOI. For example, public participation at this stage will allow the MS4 to involve the public in developing the BMPs and measurable goals for their NOI.

iii. Illicit Discharge Detection and Elimination. Discharges from small MS4s often include wastes and wastewater from non-storm water ''illicit'' discharges. Illicit discharge is defined at 40 CFR 122.26(b)(2) as any discharge to a municipal separate storm sewer that is not composed entirely of storm water, except discharges pursuant to an NPDES permit and discharges resulting from fire fighting activities. As detailed below, other sources of non-storm water, that would otherwise be considered illicit discharges, do not need to be addressed unless the operator of the MS4 identifies one or more of them as a significant source of pollutants into the system. EPA's Nationwide Urban Runoff Program (NURP) indicated that many storm water outfalls still discharge during substantial dry periods. Pollutant levels in these dry weather flows were shown to be high enough to significantly degrade receiving water quality. Results from a 1987 study conducted in Sacramento, California, revealed that slightly less than one-half of the water discharged from a municipal separate storm sewer system was not directly attributable to precipitation runoff (U.S. Environmental Protection Agency, Office of Research and Development. 1993. *Investigation of Inappropriate Pollutant Entries Into Storm Drainage Systems—A User's Guide.* Washington, DC EPA 600/R–92/238.) A significant portion of these dry weather flows results from illicit and/or inappropriate discharges and connections to the municipal separate storm sewer system. Illicit discharges enter the system through either direct connections (*e.g.,* wastewater piping either mistakenly or deliberately connected to the storm drains) or indirect connections (*e.g.,* infiltration into the storm drain system or spills collected by drain inlets).

Under the existing NPDES program for storm water, permit applications for large and medium MS4s are to include a program description for effective prohibition against non-storm water discharges into their storm sewers (see 40 CFR 122.26 (d)(1)(v)(B) and (d)(1)(iv)(B)). Further, EPA believes that in implementing municipal storm water management plans under these permits, large and medium MS4 operators generally found their illicit discharge detection and elimination programs to be cost-effective. Properly implemented programs also significantly improved water quality.

In today's rule, any NPDES permit issued to an operator of a regulated small MS4 must, at a minimum, require the operator to develop, implement and enforce an illicit discharge detection and elimination program. Inclusion of this measure for regulated small MS4s is consistent with the ''effective prohibition'' requirement for large and medium MS4s. Under today's rule, the NPDES permit will require the operator of a regulated small MS4 to: (1) Develop (if not already completed) a storm sewer system map showing the location of all outfalls, and names and location of all waters of the United States that receive discharges from those outfalls; (2) to the extent allowable under State, Tribal, or local law, effectively prohibit through ordinance, or other regulatory mechanism, illicit discharges into the separate storm sewer system and implement appropriate enforcement procedures and actions as needed; (3) develop and implement a plan to detect and address illicit discharges, including illegal dumping, to the system; and (4) inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

The illicit discharge and elimination program need only address the following categories of non-storm water discharges if the operator of the small MS4 identifies them as significant contributors of pollutants to its small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the definition of illicit discharge and only need to be addressed where they are identified as significant sources of pollutants to waters of the United States). If the operator of the MS4 identifies one or more of these categories of sources to be a significant contributor of pollutants to the system, it could require specific controls for that category of discharge or prohibit the discharges completely.

Several comments were received on the mapping requirements of the proposal. Most comments said that more flexibility should be given to the MS4s to determine their mapping needs, and that resources could be better spent in addressing problems once the illicit discharges are detected. EPA reviewed the mapping requirements in the proposed rule and agrees that some of the information is not necessary in order to begin an illicit discharge detection and elimination program. Today's rule requires a map or set of maps that show the locations of all outfalls and names and locations of receiving waters. Knowing the locations of outfalls and receiving waters are necessary to be able to conduct dry weather field screening for non-storm water flows and to respond to illicit discharge reports from the public. EPA recommends that the operator collect any existing information on outfall locations (*e.g.,* review city records, drainage maps, storm drain maps), and then conduct field surveys to verify the locations. It will probably be necessary to ''walk'' (*i.e.* wade small receiving waters or use a boat for larger receiving waters) the streambanks and shorelines, and it may take more than one trip to locate all outfalls. A coding system should be used to mark and identify each outfall. MS4 operators have the flexibility to determine the type (*e.g.* topographic, GIS, hand or computer drafted) and size of maps which best meet their needs. The map scale should be such that the outfalls can be accurately located. Once an illicit discharge is detected at an outfall, it may be necessary to map that portion of the storm sewer system leading to the outfall in order to locate the source of the discharge.

Several comments requested clarification of the requirement to develop and implement a plan to detect and eliminate illicit discharges. EPA recommends that plans include procedures for the following: locating priority areas; tracing the source of an illicit discharge; removing the source of the discharge; and program evaluation

and assessment. EPA recommends that MS4 operators identify priority areas (*i.e.,* problems areas) for more detailed screening of their system based on higher likelihood of illicit connections (*e.g.,* areas with older sanitary sewer lines), or by conducting ambient sampling to locate impacted reaches. Once priority areas are identified, EPA recommends visually screening outfalls during dry weather and conducting field tests, where flow is occurring, of selected chemical parameters as indicators of the discharge source. EPA's manual for investigation of inappropriate pollutant entries into the storm drainage system (EPA, 1993) suggests the following parameter list: specific conductivity, fluoride and/or hardness concentration, ammonia and/or potassium concentration, surfactant and/or fluorescence concentration, chlorine concentration, pH and other chemicals indicative of industrial sources. The manual explains why each parameter is a good indicator and how the information can be used to determine the type of source flow. The Agency is not recommending that fluoride and chlorine, generally used to locate potable water discharges, be addressed under this program, therefore a short list of parameters may include conductivity, ammonia, surfactant and pH. Some MS4s have found it useful to measure for fecal coliform or E. coli in their testing program. Observations of physical characteristics of the discharge are also helpful such as flow rate, temperature, odor, color, turbidity, floatable matter, deposits and stains, and vegetation.

The implementation plan should also include procedures for tracing the source of an illicit discharge. Once an illicit discharge is detected and field tests provide source characteristics, the next step is to determine the actual location of the source. Techniques for tracing the discharge to its place of origin may include: following the flow up the storm drainage system via observations and/or chemical testing in manholes or in open channels; televising storm sewers; using infrared and thermal photography; conducting smoke or dye tests.

The implementation plan should also include procedures for removing the source of the illicit discharge. The first step may be to notify the property owner and specify a length of time for eliminating the discharge. Additional notifications and escalating legal actions should also be described in this part of the plan.

Finally, the implementation plan should include procedures for program evaluation and assessment. Procedures could include documentation of actions taken to locate and eliminate illicit discharges such as: number of outfalls screened, complaints received and corrected, feet of storm sewers televised, numbers of discharges and quantities of flow eliminated, number of dye or smoke tests conducted. Appropriate records of such actions should be kept and should be submitted as part of the annual reports for the first permit term, as specified by the permitting authority (reports only need to be submitted in years 2 and 4 in later permits). For more on reporting requirements, see § 122.34(g).

EPA received comments regarding an MS4's legal authority beyond its jurisdictional boundaries to inspect or take enforcement against illicit discharges. EPA recognizes that illicit flows may originate in one jurisdiction and cross into one or more jurisdictions before being discharged at an outfall. In such instances, EPA expects the MS4 that detects the illicit flow to trace it to the point where it leaves their jurisdiction and notify the adjoining MS4 of the flow, and any other physical or chemical information. The adjoining MS4 should then trace it to the source or to the location where it enters their jurisdiction. The process of notifying the adjoining MS4 should continue until the source is located and eliminated. In addition, because any non-storm water discharge to waters of the U.S. through an MS4 is subject to the prohibition against unpermitted discharges pursuant to CWA section 301 (a), remedies are available under the federal enforcement provisions of CWA sections 309 and 505.

EPA requested and received comments regarding the prohibition and enforcement provision for this minimum measure. Commenters specifically questioned the proposal that the operator only has to implement the appropriate prohibition and enforcement procedures ''to the extent allowable under State or Tribal law.'' They raised concerns that by qualifying prohibition and enforcement procedures in this manner, the operator could altogether ignore this minimum measure where affirmative legal authority did not exist. Comments suggested that EPA require States to grant authority to those municipalities where it did not exist. Other comments, however, stated that municipalities cannot exercise legal authority not granted to them under State law, which varies considerably from one State to another. EPA has no intention of directing State legislatures on how to allocate authority and responsibility under State law. As noted above, there is at least one remedy (the federal CWA) to control non-storm water discharges through MS4s. If State law prevents political subdivisions from controlling discharges through storm sewers, EPA anticipates common sense will prevail to provide those MS4 operators with the ability to meet the requirements applicable for their discharges.

One comment reinforced the importance of public information and education to the success of this measure. EPA agrees and suggests that MS4 operators consider a variety of ways to inform and educate the public which could include storm drain stenciling; a program to promote, publicize, and facilitate public reporting of illicit connections or discharges; and distribution of visual and/or printed outreach materials. Recycling and other public outreach programs could be developed to address potential sources of illicit discharges, including used motor oil, antifreeze, pesticides, herbicides, and fertilizers.

EPA received comments that State DOT's lack authority to implement this measure. EPA believes that most DOTs can implement most parts of this measure. If a DOT does not have the necessary legal authority to implement any part of this measure, EPA encourages them to coordinate their storm water management efforts with the surrounding MS4s and other State agencies. Many DOTs that are regulated under Phase I of this program are co-permittees with the local regulated MS4. Under today's rule, DOTs can use any of the options of § 122.35 to share their storm water management responsibilities.

EPA received comments requesting clarification of various terms such as ''outfall'' and ''illicit discharge.'' One comment asked EPA to reinforce the point that a ''ditch'' could be considered an outfall. The term ''outfall'' is defined at 40 CFR 122.26(b)(9) as ''a point source at the point where a municipal separate storm sewer discharges to waters of the United States * * *''. The term municipal separate storm sewer is defined at 40 CFR § 122.26(b)(8) as ''a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) * * *''. Following the logic of these definitions, a ''ditch'' may be part of the municipal separate storm sewer, and at the point where the ditch discharges to waters of the United States, it would be an outfall. As with any determination about jurisdictional provisions of the CWA, however, final decisions require case specific evaluations of fact.

One commenter specifically requested clarification on the relationship between the term ''illicit discharge'' and non-storm water discharges from fire fighting. The comment suggested that it would be impractical to attempt to determine whether the flow from a specific fire (*i.e.,* during a fire) is a significant source of pollution. EPA intends that MS4s will address all allowable non-storm water flows categorically rather than individually. If an MS4 is concerned that flows from fire fighting are, as a category, contributing substantial amounts of pollutants to their system, they could develop a program to address those flows prospectively. The program may include an analysis of the flow from several sources, steps to minimize the pollutant contribution, and a plan to work with the sources of the discharge to minimize any adverse impact on water quality. During the development of such a program, the MS4 may determine that only certain types of flows within a particular category are a concern, for example, fire fighting flows at industrial sites where large quantities of chemicals are present. In this example, a review of existing procedures with the fire department and/or hazardous materials team may reveal weaknesses or strengths previously unknown to the MS4 operator.

EPA received comments requesting modifications to the rule to include on-site sewage disposal systems (i.e., septic systems) in the scope of the illicit discharge program. On-site sewage disposal systems that flow into storm drainage systems are within the definition of illicit discharge as defined by the regulations. Where they are found to be the source of an illicit discharge, they need to be eliminated similar to any other illicit discharge source. Today's rule was not modified to include discharges from on-site sewage disposal systems specifically because those sources are already within the scope of the existing definition of illicit discharge.

iv. Construction Site Storm Water Runoff Control. Over a short period of time, storm water runoff from construction site activity can contribute more pollutants, including sediment, to a receiving stream than had been deposited over several decades (see section I.B.3). Storm water runoff from construction sites can include pollutants other than sediment, such as phosphorus and nitrogen, pesticides, petroleum derivatives, construction chemicals, and solid wastes that may become mobilized when land surfaces are disturbed. Generally, properly implemented and enforced construction site ordinances effectively reduce these pollutants. In many areas, however, the effectiveness of ordinances in reducing pollutants is limited due to inadequate enforcement or incomplete compliance with such local ordinances by construction site operators (Paterson, R.G. 1994. ''Construction Practices: The Good, the Bad, and the Ugly.'' *Watershed Protection Techniques* 1(2)).

Today's rule requires operators of regulated small MS4s to develop, implement, and enforce a pollutant control program to reduce pollutants in any storm water runoff from construction activities that result in land disturbance of 1 or more acres (see § 122.34(b)(4)). Construction activity on sites disturbing less than one acre must be included in the program if the construction activity is part of a larger common plan of development or sale that would disturb one acre or more.

The construction runoff control program of the regulated small MS4 must include an ordinance or other regulatory mechanism to require erosion and sediment controls to the extent practicable and allowable under State, Tribal or local law. The program also must include sanctions to ensure compliance (for example, non-monetary penalties, fines, bonding requirements, and/or permit denials for non-compliance). The program must also include, at a minimum: requirements for construction site operators to implement appropriate erosion and sediment control BMPS, such as silt fences, temporary detention ponds and diversions; procedures for site plan review by the small MS4 which incorporate consideration of potential water quality impacts; requirements to control other waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may adversely impact water quality; procedures for receipt and consideration of information submitted by the public to the MS4; and procedures for site inspection and enforcement of control measures by the small MS4.

Today's rule provides flexibility for regulated small MS4s by allowing them to exclude from their construction pollutant control program runoff from those construction sites for which the NPDES permitting authority has waived NPDES storm water small construction permit requirements. For example, if the NPDES permitting authority waives permit coverage for storm water discharges from construction sites less than 5 acres in areas where the rainfall erosivity factor is less than 5, then the regulated small MS4 does not have to include these sites in its storm water management program. Even if requirements for a discharge from a given construction site are waived by the NPDES permitting authority, however, the regulated small MS4 may still chose to control those discharges under the MS4's construction pollutant control program, particularly where such discharges may cause siltation problems in storm sewers. See Section II.I.1.b for more information on construction waivers by the permitting authority.

Some commenters suggested that the proposed construction minimum measure requirements went beyond the permit application requirements concerning construction for medium and large MS4s. In response, EPA has made changes to the proposed measure so that it more closely resembles the MS4 permit application requirements in existing regulations. For example, as described below, the Agency revised the proposed requirements for ''pre-construction review of site management plans'' to require ''procedures for site plan review.''

One commenter expressed concerns that addressing runoff from construction sites within urbanized areas (through the small MS4 program) differently from construction sites outside urbanized areas (which will not be covered by the small MS4 program) will encourage urban sprawl. Today's rule, together with the existing requirements, requires all construction greater than or equal to 1 acre, unless waived, to be covered by an NPDES permit whether it is located inside or outside of an urbanized area (see § 122.26(b)(15)). Today's rule does not require small MS4s to control runoff from construction sites more stringently or prescriptively than is required for construction site runoff outside urbanized areas. Therefore, today's rule imposes no substantively different onsite controls on runoff of storm water from construction sites in urbanized areas than from construction sites outside of urbanized areas.

One commenter recommended that the small MS4 construction site storm water runoff control program address all storm water runoff from construction sites, not just the runoff into the MS4. The commenter also believed that MS4s should provide clear, objective standards for all construction sites. EPA agrees. Because today's rule only regulates discharges from the MS4, the construction pollutant control measure only requires small MS4 operators to control runoff into its system. As a practical matter, however, EPA anticipates that MS4 operators will find that regulation of all construction site

runoff, whether they runoff into the MS4 or not, will prove to be the most simple and efficient program. The Agency may provide more specific criteria for construction site BMPs in the forthcoming rule being developed under CWA section 402(m). See section II.D.1 of today's rule.

One commenter stated that there is no need for penalties at the local level by the small MS4 because the CWA already imposes sufficient penalties to ensure compliance. EPA disagrees and believes that enforcement and compliance at the local level is both necessary and preferable. Examples of sanctions, some not available under the CWA, include non-monetary penalties, monetary fines, bonding requirements, and denial of future or other local permits.

One commenter recommended that EPA should not include the requirement to control pollutants other than sediment from construction sites in this measure. EPA disagrees with this comment. The requirement is to control waste that ''may cause adverse impacts on water quality.'' Such wastes may include discarded building materials, concrete truck washout, chemicals, pesticides, herbicides, litter, and sanitary waste. These wastes, when exposed to and mobilized by storm water, can contribute to water quality impairment.

The proposed rule required ''procedures for pre-construction review of site management plans.'' EPA requested comment on expanding this provision to require both review and approval of construction site storm water plans. Many commenters expressed the concern that review and approval of site plans is not only costly and time intensive, but may unnecessarily delay construction projects and unduly burden staff who administer the local program. In addition, some commenters expressed confusion whether EPA proposed pre-construction review for all site management plans or only higher priority sites. To address these comments, and be consistent with the permit application requirements for larger MS4s, EPA changed ''procedures for pre-construction review of site management plans'' to ''procedures for site plan review.'' Today's rule requires the small MS4 to develop procedures for site plan review so as to incorporate consideration of adverse potential water quality impacts. Procedures should include review of site erosion and sediment control plans, preferably before construction activity begins on a site. The objective is for the small MS4 operator and the construction site operator to address storm water runoff from construction activity early in the project design process so that potential consequences to the aquatic environment can be assessed and adverse water quality impacts can be minimized or eliminated.

One commenter requested that EPA delete the requirement for ''procedures for receipt and consideration of information submitted by the public'' because it went beyond existing storm water requirements. Another commenter stated that establishing a separate process to respond to public inquiries on a project is a burden to small communities, especially if the project has gone through an environmental review. One commenter requested clarification of this provision. EPA has retained this requirement in today's final rule to require some formality in the process for addressing public inquiries regarding storm water runoff from construction activities. EPA does not intend that small MS4s develop a separate, burdensome process to respond to every public inquiry. A small MS4 could, for example, simply log public complaints on existing storm water runoff problems from construction sites and pass that information on to local inspectors. The inspectors could then investigate complaints based on the severity of the violation and/or priority area.

One commenter believed that the proposed requirement of ''regular inspections during construction'' would require every construction project to be inspected more than once by the small MS4 during the term of a construction project. EPA has deleted the reference to ''regular inspections.'' Instead, the small MS4 will be required to ''develop procedures for site inspection and enforcement of control measures.'' Procedures could include steps to identify priority sites for inspection and enforcement based on the nature and extent of the construction activity, topography, and the characteristics of soils and receiving water quality.

In order to avoid duplication of small MS4 construction requirements with NPDES construction permit requirements, today's rule adds § 122.44(s) to recognize that the NPDES permitting authority can incorporate qualifying State, Tribal, or local erosion and sediment control requirements in NPDES permits for construction site discharges. For example, a construction site operator who complies with MS4 construction pollutant control programs that are referenced in the NPDES construction permit would satisfy the requirements of the NPDES permit. See section II.I.1.d for more information on incorporating qualifying programs by reference into NPDES construction permits. This provision has no impact on, or direct relation to, the small MS4 operator's responsibilities under the construction site storm water runoff control minimum measure. Conversely, under § 122.35(b), the permitting authority may recognize in the MS4's permit that another governmental entity, or the permitting authority itself, is responsible for implementing one or more of the minimum measures (including construction site storm water runoff control), and not include this measure in the small MS4's permit. In this case, the other governmental entity's program must satisfy all of the requirements of the omitted measure.

v. Post-Construction Storm Water Management in New Development and Redevelopment. The NURP study and more recent investigations indicate that prior planning and designing for the minimization of pollutants in storm water discharges is the most cost-effective approach to storm water quality management. Reducing pollutant concentrations in storm water after the discharge enters a storm sewer system is often more expensive and less efficient than preventing or reducing pollutants at the source. Increased human activity associated with development often results in increased pollutant loading from storm water discharges. If potential adverse water quality impacts are considered from the beginning stages of a project, new development and redevelopment provides more opportunities for water quality protection. For example, minimization of impervious areas, maintenance or restoration of natural infiltration, wetland protection, use of vegetated drainage ways, and use of riparian buffers have been shown to reduce pollutant loadings in storm water runoff from developed areas. EPA encourages operators of regulated small MS4s to identify specific problem areas within their jurisdictions and initiate innovative solutions and designs to focus attention on those areas through local planning.

In today's rule at § 122.34(b)(5), NPDES permits issued to an operator of a regulated small MS4 will require the operator to develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that result in land disturbance of greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the MS4. Specifically, the NPDES permit will require the operator of a regulated small MS4 to: (1) Develop and implement

strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for the community; (2) use an ordinance, or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law; (3) ensure adequate long-term operation and maintenance of BMPs; and (4) ensure that controls are in place that would minimize water quality impacts. EPA intends the term ''redevelopment'' to refer to alterations of a property that change the ''footprint'' of a site or building in such a way that results in the disturbance of equal to or greater than 1 acre of land. The term is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse storm water quality impacts and offer no new opportunity for storm water controls.

EPA received comments requesting guidance and clarification of the rule requirements. The scope of the comments ranged from general requests for more details on how MS4 operators should accomplish the four requirements listed above, to specific requests for information regarding transfer of ownership for structural controls, as well as ongoing responsibility for operation and maintenance. By the term ''combination'' of BMPs, EPA intends a combination of structural and/or non-structural BMPs. For this requirement, the term ''combination'' is meant to emphasize that multiple BMPs should be considered and adopted for use in the community. A single BMP generally cannot significantly reduce pollutant loads because pollutants come from many sources within a community. The BMPs chosen should: (1) Be appropriate for the local community; (2) minimize water quality impacts; and (3) attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, EPA encourages small MS4 operators to participate in locally-based watershed planning efforts which attempt to involve a diverse group of stakeholders. Each new development and redevelopment project should have a BMP component. If an approach is chosen that primarily focuses on regional or non-structural BMPs, however, then the BMPs may be located away from the actual development site (*e.g.,* a regional water quality pond).

Non-structural BMPs are preventative actions that involve management and source controls such as: (1) Policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; (2) policies or ordinances that encourage infill development in higher density urban areas, and areas with existing storm sewer infrastructure; (3) education programs for developers and the public about project designs that minimize water quality impacts; and (4) other measures such as minimization of the percentage of impervious area after development, use of measures to minimize directly connected impervious areas, and source control measures often thought of as good housekeeping, preventive maintenance and spill prevention. Detailed examples of non-structural BMPs follow.

Preserving open space may help to protect water quality as well as provide other benefits such as recharging groundwater supplies, detaining storm water, supporting wildlife and providing recreational opportunities. Although securing funding for open space acquisition may be difficult, various funding mechanisms have been used. New Jersey uses a portion of their State sales tax (voter approved for a ten year period) as a stable source of funding to finance the preservation of historic sites, open space and farmland. Colorado uses part of the proceeds from the State lottery to acquire and manage open space. Some local municipalities use a percentage of the local sales tax revenue to pay for open space acquisition (*e.g.,* Jefferson County, CO has had an open space program in place since 1977 funded by a 0.50 percent sales tax). Open space can be acquired in the form of: fee simple purchase; easements; development rights; purchase and sellback or leaseback arrangements; purchase options; private land trusts; impact fees; and land dedication requirements. Generally, fee simple purchases provide the highest level of development control and certainty of preservation, whereas the other forms of acquisition may provide less control, though they would also generally be less costly.

Cluster development, while allowing housing densities comparable to conventional zoning practice, concentrates housing units in a portion of the total site area which provides for greater open space, recreation, stream protection and storm water control. This type of development, by reducing lot sizes, can protect sensitive areas and result in less impervious surface, as well as reduce the cost for roads and other infrastructure.

Minimizing directly connected impervious areas (DCIAs) is a drainage strategy that seeks to reduce paved areas and directs storm water runoff to landscaped areas or to structural controls such as grass swales or buffer strips. This strategy can slow the rate of runoff, reduce runoff volumes, attenuate peak flows, and encourage filtering and infiltration of storm water. It can be made an integral part of drainage planning for any development (Urban Drainage and Flood Control District, Denver, CO. 1992. *Urban Storm Drainage Criteria Manual, Volume 3—Best Management Practices).* The Urban Drainage and Flood Control District manual describes three levels for minimizing DCIAs. At Level 1 all impervious surfaces are made to drain over grass-covered areas before reaching a storm water conveyance system. Level 2 adds to Level 1 and replaces street curb and gutter systems with low-velocity grass-lined swales and pervious street shoulders. In addition to Levels 1 and 2, Level 3 over-sizes swales and configures driveway and street crossing culverts to use grass-lined swales as elongated detention basins.

Structural BMPs include: (1) Storage practices such as wet ponds and extended-detention outlet structures; (2) filtration practices such as grassed swales, sand filters and filter strips; and (3) infiltration practices such as infiltration basins and infiltration trenches.

EPA recommends that small MS4 operators ensure the appropriate implementation of the structural BMPs by considering some or all of the following: (1) Pre-construction review of BMP designs; (2) inspections during construction to verify BMPs are built as designed; (3) post-construction inspection and maintenance of BMPs; and (4) sanctions to ensure compliance with design, construction or operation and maintenance (O&M) requirements of the program.

EPA cautions that certain infiltration systems such as dry wells, bored wells or tile drainage fields may be subject to Underground Injection Control (UIC) program requirements (see 40 CFR Part 144.12.). To find out more about these requirements, contact your state UIC Program, or call EPA's Safe Drinking Water Hotline at 1–800–426–4791.

In order to meet the third post-construction requirement (ensuring adequate long-term O&M of BMPs), EPA recommends that small MS4 operators evaluate various O&M management agreement options. The most common options are agreements between the

MS4 operator and another party such as post-development landowners (*e.g.,* homeowners' associations, office park owners, other government departments or entities), or regional authorities (*e.g.,* flood control districts, councils of government). These agreements typically require the post-construction property owner to be responsible for the O&M and may include conditions which: allow the MS4 operator to be reimbursed for O&M performed by the MS4 operator that is the responsibility of the property owner but is not performed; allow the MS4 operator to enter the property for inspection purposes; and in some cases specify that the property owner submit periodic reports.

In providing the guidance above, EPA intends the requirements in today's rule to be consistent with the permit application requirements for large MS4s for post-construction controls for new development and redevelopment. MS4 operators have significant flexibility both to develop this measure as appropriate to address local concerns, and to apply new control technologies as they become available. Storm water pollution control technologies are constantly being improved. EPA recommends that MS4s be responsive to these changes, developments or improvements in control technologies. EPA will provide more detailed guidance addressing the responsibility for long-term O&M of storm water controls in guidance materials. The guidance will also provide information on appropriate planning considerations, structural controls and non-structural controls. EPA also intends to develop a broad menu of BMPs as guidance to ensure flexibility to accommodate local conditions.

EPA received comments suggesting that requirements for new development be treated separately from redevelopment in the rule. The comment stressed that new development on raw land presents fewer obstacles and more opportunities to incorporate elements for preventing water quality impacts, whereas redevelopment projects are constrained by space limitations and existing infrastructure. Another comment suggested allowing waivers from the redevelopment requirements if the redevelopment does not result in additional adverse water quality impacts, and where BMPs are not technologically or economically feasible. EPA recognizes that redevelopment projects may have more site constraints which narrow the range of appropriate BMPs. Today's rule provides small MS4 operators with the flexibility to develop requirements that may be different for redevelopment projects, and may also include allowances for alternate or off-site BMPs at certain redevelopment projects. Non-structural BMPs may be the most appropriate approach for smaller redevelopment projects.

EPA received comments requesting clarification on what is meant by ''pre-development'' conditions within the context of redevelopment. Pre-development refers to runoff conditions that exist onsite immediately before the planned development activities occur. Pre-development is not intended to be interpreted as that period before any human-induced land disturbance activity has occurred.

EPA received comments on the guidance language in the proposed rule and preamble which suggest that implementation of this measure should ''attempt to maintain pre-development runoff conditions'' and that ''post-development conditions should not be different than pre-development conditions in a way that adversely affects water quality.'' Many comments expressed concern that maintaining pre-development runoff conditions is impossible and cost-prohibitive, and objected to any reference to ''flow'' or increase in volume of runoff. Other comments support the inclusion of this language in the final rule. Similar references in today's rule relating to pre-development runoff conditions are intended as *recommendations* to *attempt* to maintain pre-development runoff conditions. With these recommendations, EPA intends to prevent water quality impacts resulting from increased discharges of pollutants, which may result from increased volume of runoff. In many cases, consideration of the increased flow rate, velocity and energy of storm water discharges following development unavoidably must be taken into consideration in order to reduce the discharge of pollutants, to meet water quality standards and to prevent degradation of receiving streams. EPA recommends that municipalities consider these factors when developing their post-construction storm water management program.

Some comments said that the quoted phrases in the paragraph above are directives that imply federal land use control, which they argue is beyond the authority of the CWA. EPA recognizes that land use planning is within the authority of local governments.

EPA disagrees, however, with the implication that today's rule dictates any such land use decisions. The requirement for small MS4 operators to develop a program to address discharges resulting from new development and redevelopment is essentially a pollution prevention measure. The Rule provides the MS4 operator with flexibility to determine the appropriate BMPs to address local water quality concerns. EPA recognizes that these program goals may not be applied to every site, and expects that MS4s will develop an appropriate combination of BMPs to be applied on a site-by-site, regional or watershed basis.

vi. Pollution Prevention/Good Housekeeping for Municipal Operations. Under today's final rule, operators of MS4s must develop and implement an operation and maintenance program (''program'') that includes a training component and has the ultimate goal of preventing or reducing storm water from municipal operations (in addition to those that constitute storm water discharges associated with industrial activity). This measure's emphasis on proper O&M of MS4s and employee training, as opposed to requiring the MS4 to undertake major new activities, is meant to ensure that municipal activities are performed in the most efficient way to minimize contamination of storm water discharges.

The program must include government employee training that addresses prevention measures pertaining to municipal operations such as: parks, golf courses and open space maintenance; fleet maintenance; new construction or land disturbance; building oversight; planning; and storm water system maintenance. The program can use existing storm water pollution prevention training materials provided by the State, Tribe, EPA, or environmental, public interest, or trade organizations.

EPA also encourages operators of MS4s to consider the following in developing a program: (1) Implement maintenance activities, maintenance schedules, and long-term inspection procedures for structural and non-structural storm water controls to reduce floatables and other pollutants discharged from the separate storm sewers; (2) implement controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, and salt/sand storage locations and snow disposal areas operated by the MS4; (3) adopt procedures for the proper disposal of waste removed from the separate storm sewer systems and areas listed above in (2), including dredge

spoil, accumulated sediments, floatables, and other debris; and (4) adopt procedures to ensure that new flood management projects are assessed for impacts on water quality and existing projects are assessed for incorporation of additional water quality protection devices or practices. Ultimately, the effective performance of the program measure depends on the proper maintenance of the BMPs, both structural and non-structural. Without proper maintenance, BMP performance declines significantly over time. Additionally, BMP neglect may produce health and safety threats, such as structural failure leading to flooding, undesirable animal and insect breeding, and odors. Maintenance of structural BMPs could include: replacing upper levels of gravel; dredging of detention ponds; and repairing of retention basin outlet structure integrity. Maintenance of non-structural BMPs could include updating educational materials periodically.

EPA emphasizes that programs should identify and incorporate existing storm water practices and training, as well as non-storm water practices or programs that have storm water pollution prevention benefits, as a means to avoid duplication of efforts and reduce overall costs. EPA recommends that MS4s incorporate these new obligations into their existing programs to the greatest extent feasible and urges States to evaluate MS4 programs with programmatic efficiency in mind. EPA designed this minimum control measure as a modified version of the permit application requirements for medium and large MS4s described at 40 CFR 122.26(d)(2)(iv), in order to provide more flexibility for these smaller MS4s. Today's requirements provide for a consistent approach to control pollutants from O&M among medium, large, and regulated small MS4s.

By properly implementing a program, operators of MS4s serve as a model for the rest of the regulated community. Furthermore, the establishment of a long-term program could result in cost savings by minimizing possible damage to the system from floatables and other debris and, consequently, reducing the need for repairs.

EPA received comments requesting clarification of what this measure requires. Certain municipalities expressed concern that the measure has the potential to impose significant costs associated with EPA's requirement that operators of MS4s consider implementing controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, and salt/sand storage locations and snow disposal areas operated by the municipality. EPA disagrees that a requirement to *consider* such controls will impose considerable costs.

One commenter objected to the preamble language from the proposal suggesting that EPA does not expect the MS4 to undertake new activity. While it remains the Agency's expectation that major new activity will not be required, the MEP process should drive MS4s to incorporate the measure's obligations into their existing programs to achieve the pollutant reductions to the maximum extent practicable.

Certain commenters requested a definition for ''municipal operations.'' EPA has revised the language to more clearly define municipal operations. Questions may remain concerning whether discharges from specific municipal activities constitute discharges associated with industrial activities (requiring NPDES permit authorization according to the requirements for industrial storm water that apply in that State) or from municipal operations (subject only to the controls developed in the MS4 control program). Even though there may be different substantive requirements that apply depending on the source of the discharge, EPA has modified the deadlines for permit coverage so that all the regulated municipally owned and operated sources become subject to permit requirements on the same date. The deadline is the same for permit coverage for this minimum measure as for permit coverage for municipally owned/operated industrial sources.

c. Application Requirements

An NPDES permit that authorizes the discharge from a regulated small MS4 may take the form of either an individual permit issued to one or more facilities as co-permittees or a general permit that applies to a group of MS4s. For reasons of administrative efficiency and to reduce the paperwork burden on permittees, EPA expects that most discharges from regulated small MS4s will be authorized under general permits. These NPDES general permits will provide specific instructions on how to obtain coverage, including application requirements. Typically, such application requirements will be satisfied by the submission of a Notice of Intent (NOI) to be covered by the general permit. In this section, EPA explains the small MS4 operator's application requirements for obtaining coverage under a NPDES permit for storm water.

i. Best Management Practices and Measurable Goals, Section 122.34(d) of today's rule requires the operator of a regulated small MS4 that wishes to implement a program under § 122.34 to identify and submit to the NPDES permitting authority a list of the best management practices (''BMPs'') that will be implemented for each minimum control measure in their storm water management program. They also must submit measurable goals for the development and implementation of each BMP. The BMPs and the measurable goals must be included either in an NOI to be covered under a general permit or in an individual permit application.

The operator's submission must identify, as appropriate, the months and years in which the operator will undertake actions required to implement each of the minimum control measures, including interim milestones and the frequency of periodic actions. The Agency revised references to ''starting and completing'' actions from the proposed rule because many actions will be repetitive or ongoing. The submission also must identify the person or persons responsible for implementing or coordinating the small MS4 storm water program. See § 122.34(d). The submitted BMPs and measurable goals become enforceable according to the terms of the permit. The first permit can allow the permittee up to five years to fully implement the storm water management program.

Several commenters opposed making the measurable goals enforceable permit conditions. Some suggested that a permittee should be able to change its goals so that BMPs that are not functioning as intended can be replaced. EPA agrees that a permittee should be free to switch its BMPs and corresponding goals to others that accomplish the minimum measure or measures. The permittee is required to implement BMPs that address the minimum measures in § 122.34(b). If the permittee determines that its original combination of BMPs are not adequate to achieve the objectives of the municipal program, the MS4 should revise its program to implement BMPs that are adequate and submit to the permitting authority a revised list of BMPs and measurable goals. EPA suggests that permits describe the process for revising BMPs and measurable goals, such as whether the permittee should follow the same procedures as were required for the submission of the original NOI and whether the permitting authority's approval is necessary prior to the permittee implementing the revised

BMPs. The permittee should indicate on its periodic report whether any BMPs and measurable goals have been revised since the last periodic report.

Some commenters expressed concern that making the measurable goals enforceable would encourage the development of easily attained goals and, conversely, discourage the setting of ambitious goals. Others noted that it is often difficult to determine the pollutant reduction that can be achieved by BMPs until several years after implementation. Much of the opposition to the enforceability of measurable goals appears to have been based on a mistaken understanding that measurable goals must consist of pollutant reduction targets to be achieved by the corresponding BMPs.

Today's rule requires the operator to submit either measurable goals that serve as BMP design objectives or goals that quantify the progress of implementation of the actions or performance of the permittee's BMPs. At a minimum, the required measurable goals should describe specific actions taken by the permittee to implement each BMP and the frequency and the dates for such actions. Although the operator may choose to do so, it is not required to submit goals that measure whether a BMP or combination of BMPs is effective in achieving a specific result in terms of storm water discharge quality. For example, a measurable goal might involve a commitment to inspect a given number of drainage areas of the collection system for illicit connections by a certain date. The measurable goal need not commit to achieving a specific amount of pollutant reduction through the elimination of illicit connections. Other measurable goals could include the date by which public education materials would be developed, a certain percentage of the community participating in a clean-up campaign, the development of a mechanism to address construction site runoff, and a reduction in the percentage of imperviousness associated with new development projects.

To reduce the risk that permittees will develop inadequate BMPs, EPA intends to develop a menu of BMPs to assist the operators of regulated small MS4s with the development of municipal programs. States may also develop a menu of BMPs. Today's rule provides that the measurable goals that demonstrate compliance with the minimum control measures in §§ 122.34 (b)(3) through (b)(6) do not have to be met if the State or EPA has not issued a menu of BMPs at the time the MS4 submits its NOI. Commenters pointed out that the proposed rule would have made the measurable goals unenforceable if the menu of BMPs was not available, but the proposal was silent as to the enforceability of the implementation of BMPs. Today's rule clarifies that the operators are not free to do nothing prior to the issuance of a menu of BMPs; they still must make a good faith effort to implement the BMPs designed to comply with each measure. See § 122.34(d)(2). The operators would not, however, be liable for failure to meet its measurable goals if a menu of BMPs was not available at the time they submit their NOI.

The proposed rule provision in § 123.35 stated that the ''[f]ailure to issue the menu of BMPs would not affect the legal status of the general permit.'' This concept is included in the final rule in § 122.34(d)(2)'s clarification that the permittee still must comply with other requirements of the general permit.

Unlike the proposed rule, today's rule does not require that each BMP in the menu developed by the State or EPA be regionally appropriate, cost-effective and field-tested. Various commenters criticized those criteria as unworkable, and one described them as ''ripe for ambiguity and abuse.'' Other commenters feared that the operators of regulated small MS4s would never be required to achieve their goals until menus were developed that were cost-effective, field-tested and appropriate for every conceivable subregion.

While some municipal commenters supported the requirement that a menu of BMPs be made available that included BMPs that had been determined to be regionally appropriate, field-tested and cost-effective, others raised concerns that they would be restricted to a limited menu. Some commenters supported such a detailed menu because they thought they would only be able to select BMPs that were on the menu, while others thought that it was the permitting authority's responsibility to develop BMPs narrowly tailored to their situation. In response, EPA notes that the operators will not be restricted to implementing only, or all of, the BMPs included on the menu. Since the menu does not require permittees to implement the BMPs included on the menu, it is also not necessary to apply the public notice and other procedures that some commenters thought should be applied to the development of the menu of BMPs.

The purpose of the BMP menu is to provide guidance to assist the operators of regulated small MS4s with the development and refinement of their local program, not to limit their options. Permittees may implement BMPs other than those on the menu unless a State restricts its permittees to specific BMPs. To the extent possible, EPA will develop a menu of BMPs that describes the appropriateness of BMPs to specific regions, whether the BMPs have been field-tested, and their approximate costs. The menu, however, is not intended to relieve permittees of the need to implement BMPs that are appropriate for their specific circumstances.

If there are no known relevant BMPs for a specific circumstance, a permittee has the option of developing and implementing pilot BMPs that may be better suited to their circumstances. Where BMPs are experimental, the permittee should consider committing to measurable goals that address its schedule for implementing its selected BMPs rather than goals of achieving specific pollutant reductions. If the BMPs implemented by the permittee do not achieve the desired objective, the permittee may be required to commit to different or revised BMPs.

As stated in § 123.35(g), EPA is committed to issuing a menu of BMPs prior to the deadline for the issuance of permits. This menu would serve as guidance for all operators of regulated small MS4s nationwide. After developing the initial menu of BMPs, EPA intends to periodically modify, update, and supplement the menu of BMPs based on the assessments of the MS4 storm water program and research. States may rely on EPA's menu of BMPs or issue their own. If States develop their own menus, they would constitute additional guidance (or perhaps requirements in some States) for the operators to follow. Several commenters were confused by the proposed rule language that stated that States must provide or issue a menu of BMPs and, if they fail to do so, EPA ''may'' do so. Some read this language as not requiring either EPA or the State to develop the menu. EPA had intended that it would develop a menu and that States could either provide the EPA developed menu or one developed by the State.

EPA has dropped the proposed language that States ''must'' develop the menu of BMPs. Some commenters thought that it was inappropriate to require States to issue guidance. A menu of BMPs issued by either EPA or a permittee's State will satisfy the condition in § 122.34(d) that a regulatory authority provide a menu of BMPs. A State could require its permittees to follow its menu of BMPs provided that they are adequate to implement § 122.34(b).

Several commenters raised concerns that operators of small MS4s could be

required to submit their BMPs and measurable goals before EPA or the State has issued a menu of BMPs. EPA has assumed primary responsibility for developing a menu of BMPs to minimize the possibility of this occurring. Should a general permit be issued before a menu of BMPs is available, the permit writer would have the option of delaying the date by which the identification of the BMPs and measurable goals must be submitted to the permitting authority until some time after a menu of BMPs is available.

Several municipal commenters raised concerns that they would begin to develop a program only to be later told by the permitting authority or challenged in a citizen suit that their BMPs were inadequate. They expressed a need for certainty regarding what their permit required. Several commenters suggested that EPA require permitting authorities to approve or disapprove the submitted BMPs and measurable goals. EPA disagrees that formal approval or disapproval by the permitting authority is needed.

EPA acknowledges that the lack of a formal approval process does place on the permittee some responsibility for designing and determining the adequacy of its BMPs. Once the permittee has submitted its BMPs to the permitting authority as part of its NOI, it must implement them in order to achieve the corresponding measurable goals. EPA does not believe that this results in the uncertainty to the extent expressed by some commenters or unduly expose the permittee to the risk of citizen suit. If the permit is very specific regarding what the permittee must do, then the uncertainty is eliminated. If the permit is less prescriptive, the permittee has greater latitude in determining for itself what constitutes an adequate program. A citizen suit could impose liability on the permittee only if the program that it develops and implements clearly does not satisfy the requirements of the general permit. EPA believes today's approach strikes a balance between the competing goals of providing certainty as to what constitutes an adequate program and providing flexibility to the permittees.

Commenters were divided on whether five years was a reasonable and expeditious schedule for a MS4 to implement its program. Some thought that it was an appropriate amount of time to allow for the development and implementation of adequate programs. One questioned whether the permittee had to be implementing all of its program within that time, and suggested that there may be cases where a permitting authority would need flexibility to allow more time. One commenter suggested that five years is too long and would amount to a relaxation of implementation in their area. EPA believes it will take considerable time to complete the tasks of initially developing a program, commencing to implement it, and achieving results. EPA notes, however, that full implementation of an appropriate program must occur as expeditiously as possible, and not later than five years.

EPA solicited comment on how an NOI form might best be formatted to allow for measurable goal information (*e.g.,* through the use of check boxes or narrative descriptions) while taking into account the Agency's intention to facilitate computer tracking. All commenters supported the development of a checklist NOI, but most noted that there would need to be room for additional information to cover unusual situations. One noted that, while a summary of measurable goals might be reduced to one sheet, attachments that more fully described the program and the planned BMPs would be necessary. EPA agrees that in most cases a ''checklist'' will not be able to capture the information on what BMPs a permittee intends to implement and its measurable goals for their implementation. EPA will continue to consider whether to develop a model NOI form and make it available for permitting authorities that choose to use it. What will be required on an MS4's NOI, however, is more extensive than what is usually required on an NOI, so a ''form'' NOI for MS4s may be impractical.

ii. Individual Permit Application for a § 122.34(b) program. In some cases, an operator of a regulated small MS4s may seek coverage under an individual NPDES permit, either because it chooses to do so or because the NPDES permitting authority has not made the general permit option available to that source. For small MS4s that are to implement a § 122.34(b) program in today's rule, EPA is promulgating simplified individual permit application requirements at § 122.33(b)(2)(i). Under the simplified individual permit application requirements, the operator submits an application to the NPDES permitting authority that includes the information required under § 122.21(f) and an estimate of square mileage served by the small MS4. They are also required to supply the BMP and measurable goal information required under § 122.34(d). Consistent with CWA section 308 and analogous State law, the permitting authority could request any additional information to gain a better understanding of the system and the areas draining into the system.

Commenters suggested that the requirements of § 122.21(f) are not necessarily applicable to a small MS4. One suggested that it was not appropriate to require the following information: a description of the activities conducted by the applicant which require it to obtain an NPDES permit; the name, mailing address, and location of the facility; and up to four Standard Industrial Classification (''SIC'') codes which best reflect the principal products or services provided by the facility. In response, EPA notes that the requirements in § 122.21(f) are generic application requirements applicable to NPDES applicants. With the exception of the SIC code requirement, EPA believes that they are applicable to MS4s. In the SIC code portion of the standard application, the applicant may simply put ''not applicable.''

One commenter asked that EPA clarify whether § 122.21(f)(5)'s requirement to indicate ''whether the facility is located on Indian lands,'' referred to tribal lands, Indian country, or Indian reservations. For some local governments this is a complex issue with no easy ''yes'' or ''no'' answer. See the discussion in the Section II.F in the proposal to today's rule regarding what tribal lands are subject to the federal trust responsibility for purposes of the NPDES program.

One commenter suggested that the application should not have to list the permits and approvals required under § 122.21(f)(6). EPA notes that the applicant must only list the environmental permits that the applicant has received that cover the small MS4. The applicant is not required to list permits for other operations conducted by the small MS4 operator (*e.g.,* for an operation of an airport or landfill). Again, in most cases the applicant could respond ''not applicable'' to this portion of the application.

One commenter suggested that the topographic map requirement of § 122.21(f)(7) was completely different from, and significantly more onerous than, the mapping requirement outlined in the proposed rule at § 122.34(b)(3)(i). EPA agrees and has modified the final rule to clarify that a map that satisfies the requirements of § 122.34(b)(3)(i) also satisfies the map requirements for MS4 applicants seeking individual permits under § 122.33(b)(2)(i).

EPA is adding a new paragraph to § 122.44(k) to clarify that requirements to implement BMPs developed pursuant to CWA 402(p) are appropriate permit

conditions. While such conditions could be included under the existing provision in § 122.44(k)(3) for ''practices reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA,'' EPA believes it is clearer to specifically list in § 122.44(k) BMPs that implement storm water programs in light of the frequency with which they are used as effluent limitations.

iii. Alternative Permit Options/Tenth Amendment. As an alternative to implementing a program that addresses each of the six minimum measures according to the requirements of § 122.34(b), today's rule provides the operators of regulated small MS4s with the option of applying for an individual permit under existing § 122.26(d). *See* § 122.33(b)(2)(ii). If a system operator does not want to be held accountable for implementation of each of the minimum measures, an individual permit option under § 122.33(b)(2)(ii) remains available. (As explained in the next section of this preamble, § 122.35(b) also provides an opportunity for relief from permit obligations for some of the minimum measures, but that relief exists within the framework of the minimum measures.)

EPA originally drafted the individual permit application requirements in § 122.26(d) to apply to medium and large MS4s. Today's rule abbreviates the individual permit application requirements for small MS4s. Although EPA believes that the storm water management program requirements of § 122.34, including the minimum measures, provide the most appropriate means to control pollutants from most small MS4s, the Agency does recognize that the operators of some small MS4s may prefer more individualized permit requirements. Among other possible reasons, an operator may seek to avoid having to ''regulate'' third parties discharging into the separate storm sewer system. Alternatively, an operator may determine that structural controls, such as constructed wetlands, are more appropriate or effective to address the discharges that would otherwise be addressed under the construction and/or development/redevelopment measures.

Some MS4s commenters alleged that an absolute requirement to implement the minimum measures violates the Tenth Amendment to the U.S. Constitution. While EPA disagrees that requiring MS4s to implement the minimum measures would violate the Constitution, today's rule does provide small MS4s with the option of developing more individualized measures to reduce the pollutants and pollution associated with urban storm water that will be regulated under today's rule.

Some commenters specifically objected that § 122.34's minimum measures for small MS4s violate the Tenth Amendment insofar as they require the operators of MS4s to regulate third parties. The minimum measures include requirements for small MS4 operators to prohibit certain non-storm water discharges, control storm water discharges from construction greater than one acre, and take other actions to control third party sources of storm water discharges into their MS4s. Commenters also argued that it was inappropriate for EPA to require local governments to enact ordinances that will consume local revenues and put local governments in the position of bearing the political responsibility for implementing the program. One commenter argued that EPA was prohibited from conditioning the issuance of an NPDES permit upon the small MS4 operators waiving their constitutional right to be free from such requirements to regulate third parties. The Agency replies to each comment in turn.

Because the rule does rely on local governments—who operate municipal separate storm sewer systems—to regulate discharges from third parties into storm sewers, EPA acknowledges that the rule implicates the Tenth Amendment and constitutional principles of federalism. EPA disagrees, however, that today's rule is inconsistent with federalism principles. [As political subdivisions of States, municipalities enjoy the same protections as States under the Tenth Amendment.]

The Supreme Court has interpreted the Tenth Amendment to preclude federal actions that compel States or their political subdivisions to enact or administer a federal regulatory program. *See New York* v. *United States,* 505 U.S. 144 (1992); *Printz* v. *United States,* 117 S.Ct. 2365 (1997). The *Printz* case, however, did acknowledge that the restriction does not apply when federal requirements of general applicability—requirements that regulate all parties engaging in a particular activity—do not excessively interfere with the functioning of State governments when those requirements are applied to States (or their political subdivisions). *See Printz,* 117 S.Ct. at 2383.

Today's rule imposes a federal requirement of general applicability, namely, the requirement to obtain and comply with an NPDES permit, on municipalities that operate a municipal separate storm sewer system. By virtue of this rule, the permit will require the municipality/storm sewer operator to develop a storm water control program. The rule specifies the components of the control program, which are primarily ''management'-type controls, for example, municipal regulation of third party storm water discharges associated with construction, as well as development and redevelopment, when those discharges would enter the municipal system.

Unlike the circumstances reviewed in the *New York* and *Printz* cases, today's rule merely applies a generally applicable requirement (the CWA permit requirement) to municipal point sources. The CWA establishes a generally applicable requirement to obtain an NPDES permit to authorize point source discharge to waters of the United States. Because municipalities own and operate separate storm sewers, including storm sewers into which third parties may discharge pollutants, NPDES permits may require municipalities to control the discharge of pollutants into the storm sewers in the first instance. Because NPDES permits can impose end-of-pipe numeric effluent limits, narrative effluent limits in the form of ''management'' program requirements are also within the scope of Clean Water Act authority. As noted above, however, EPA believes that such narrative limitations are the most appropriate form of effluent limitation for these types of permits. For municipal separate storm sewer permits, CWA section 402(p)(3)(B)(iii) specifically authorizes ''controls to reduce pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.''

The Agency did not design the minimum measures in § 122.34 to ''commandeer'' state regulatory mechanisms, but rather to reduce pollutant discharges from small MS4s. The permit requirement in CWA section 402 is a requirement of general applicability. The operator of a small MS4 that does not prohibit and/or control discharges into its system essentially accepts ''title'' for those discharges. At a minimum, by providing free and open access to the MS4s that convey discharges to the waters of the United States, the municipal storm sewer system enables water quality impairment by third parties. Section 122.34 requires the operator of a regulated small MS4 to control a third

party only to the extent that the MS4 collection system receives pollutants from that third party and discharges it to the waters of the United States. The operators of regulated small MS4s cannot passively receive and discharge pollutants from third parties. The Agency concedes that administration of a municipal program will consume limited local revenues for implementation; but those consequences stem from the municipal operator's identity as a permitted sewer system operator. The Tenth Amendment does not create a blanket municipal immunity from generally applicable requirements. Development of a program based on the minimum measures and implementation of that program should not ''excessively interfere'' with the functioning of municipal government, especially given the ''practicability'' threshold under CWA section 402(p)(3)(B)(iii).

As noted above, today's rule also allows regulated small MS4s to opt out of the minimum measures approach. The individual permit option provides for greater flexibility in program implementation and also responds to the comment about requiring a municipal permit applicant's waiver of any arguable constitutional rights. The individual permit option responds to questions about the rule's alleged unconstitutionality by more specifically focusing on the pollutants discharged from municipal point sources. Today's rule gives operators of MS4s the option to seek an individual permit that varies from the minimum measures/management approach that is otherwise specified in today's rule. Even if the minimum measures approach was constitutionally suspect, a requirement that standing alone would violate constitutional principles of federalism does not raise concerns if the entity subject to the requirement may opt for an alternative action that does not raise a federalism issue.

For municipal system operators who seek to avoid third party regulation according to all or some of the minimum measures, § 122.26(d) requires the operator to submit a narrative description of its storm water sewer system and any existing storm water control program, as well as the monitoring data to enable the permit writer to develop appropriate permit conditions. The permit writer can then develop permit conditions and limitations that vary from the six minimum measures prescribed in today's rule. The information will enable the permit writer to develop an NPDES permit that will result in pollutant reduction to the maximum extent practicable. *See NRDC* v. *EPA,* 966 F.2d at 1308, n17. If determined appropriate under CWA section 402(p)(3)(B)(iii), for example BMPs to meet water quality standards, the permit could also incorporate any more stringent or prescriptive effluent limits based on the individual permit application information.

For small MS4 operators seeking an individual permit, both Part 1 and Part 2 of the application requirements in § 122.26(d)(1) and (2) are required to be submitted within 3 years and 90 days of the date of publication of this **Federal Register** notice. Some of the information required in Part 1 will necessarily have to be developed by the permit applicant prior to the development of Part 2 of the application. The permit applicant should coordinate with its permitting authority regarding the timing of review of the information.

The operators of regulated small MS4s that apply under § 122.26(d) may apply to implement certain of the § 122.34(b) minimum control measures, and thereby focus the necessary evaluation for additional limitations on alternative controls to the § 122.34(b) measures that the small MS4 will not implement. The permit writer may determine ''equivalency'' for some or all of the minimum measures by developing a rough estimate of the pollutant reduction that would be achieved if the MS4 implemented the § 122.34 minimum measure and to incorporate that pollutant reduction estimate in the small MS4's individual permit as an effluent limitation. The Agency recognizes that, based on current information, any such estimates will probably have a wide range. Anticipation of this wide range is one of the reasons EPA believes MS4 operators need flexibility in determining the mix of BMPs (under the minimum measures) to achieve water quality objectives. Therefore, for example, if a system operator seeks to employ an alternative that involves structural controls, wide ranges will probably be associated with gross pollutant reduction estimates. Permit writers will undoubtedly develop other ways to ensure that permit limits ensure reduction of pollutants to the maximum extent practicable.

Small MS4 operators that pursue this individual permit option do not need to submit details about their future program requirements (*e.g.*, the MS4's future plans to obtain legal authority required by §§ 122.26(d)(1)(ii) and (d)(2)). A small MS4 operator might elect to supply such information if it intends for the permit writer to take those plans into account when developing the small MS4's permit conditions.

Several operators of small MS4s commented that they currently lacked the authority they would need to implement one or more of the minimum measures in § 122.34(b). Today's rule recognizes that the operators of some small MS4s might not have the authority under State law to implement one or more of the measures using, for example, an ordinance or other regulatory mechanism. To address these situations, each minimum measure in § 122.34(b) that would require the small MS4 operator to develop an ordinance or other regulatory mechanism states that the operator is only required to implement that requirement to ''the extent allowable under State, Tribal or local law.'' See § 122.34(b)(3)(ii) (illicit discharge elimination), § 122.34(b)(4)(ii) (construction runoff control) and § 122.34(b)(5)(ii) (post-construction storm water management). This regulatory language does not mean that a operator of a small MS4 with ordinance making authority can simply fail to pass an ordinance necessary for a § 122.34(b) program. The reference to ''the extent allowable under * * * local law'' refers to the local laws of *other* political subdivisions to which the MS4 operator is subject. Rather, a small MS4 operator that seeks to implement a program under section § 122.34(b) may omit a requirement to develop an ordinance or other regulatory mechanism only to the extent its municipal charter, State constitution or other legal authority prevents the operator from exercising the necessary authority. Where the operator cannot obtain the authority to implement any activity that is only required to ''the extent allowable under State, Tribal or local law,'' the operator may satisfy today's rule by administering the remaining § 122.34(b) requirements.

Finally, although today's rule provides operators of small MS4s with an option of applying for a permit under § 122.26(d), States authorized to administer the NPDES program are not required to provide this option. NPDES-authorized States could require all regulated small MS4s to be permitted under the minimum measures management approach in § 122.34 as a matter of State law. Such an approach would be deemed to be equally or more stringent than what is required by today's rule. *See* 40 CFR 123.2(i). The federalism concerns discussed above do not apply to requirements imposed by a State on its political subdivisions.

iv. Satisfaction of Minimum Measure Obligations by Another Entity. An operator of a regulated small MS4 may

satisfy the requirement to implement one or more of the six minimum measures in § 122.34(b) by having a third party implement the measure or measures. Today's rule provides a variety of means for small MS4 operators to share responsibility for different aspects of their storm water management program. The means by which the operators of various MS4s share responsibility may affect who is ultimately responsible for performance of the minimum measure and who files the periodic reports on the implementation of the minimum measure. Section 122.35 addresses these issues. The rule describes two different variants on third party implementation with different consequences if the third party fails to implement the measure.

If the permit covering the discharge from a regulated small MS4 identifies the operator as the entity responsible for a particular minimum control measure, then the operator-permittee remains responsible for the implementation of that measure even if another entity has agreed to implement the control measure. Section 122.35(a). Another party may satisfy the operator-permittee's responsibility by implementing the minimum control measure in a manner at least as stringent or prescriptive as the corresponding NPDES permit requirement. If the third party fails to do so, the operator-permittee remains responsible for its performance. The operator of the MS4 should consider entering into an agreement with the third party that acknowledges the responsibility to implement the minimum measure. The operator-permittee's NOI and its annual § 122.34(f)(3) reports submitted to the NPDES permitting authority must identify the third party that is satisfying one or more of the permit obligations. This requirement ensures that the permitting authority is aware which entity is supposed to implement which minimum measures.

If, on the other hand, the regulated small MS4's permit recognizes that an NPDES permittee other than the operator-permittee is responsible for a particular minimum control measure, then the operator-permittee is relieved from the responsibility for implementing that measure. The operator-permittee is also relieved from the responsibility for implementing any measure that the operator's permit indicates will be performed by the NPDES permitting authority. Section 122.35(b). The MS4 operator-permittee would be responsible for implementing the remaining minimum measures.

Today's final rule differs from the proposed version of § 122.35(b), which stated that, even if the third party's responsibility is recognized in the permit, the MS4 operator-permittee remained responsible for performance if the third party failed to perform the measure consistent with § 122.34(b). Under today's rule, the operator-permittee is relieved from responsibility for performance of a measure if the third party is an NPDES permittee whose permit makes it responsible for performance of the measure (including, for example, a State agency other than the State agency that issues NPDES permits) or if the third party is the NPDES permitting authority itself. Because the permitting authority is acknowledging the third party's responsibility in the permit, commenters thought that the MS4 operator-permittee should not be responsible for ensuring that the other entity is implementing the control measure properly. EPA agrees that the operator-permittee should not be conditionally responsible when the requirements are enforceable against some other NPDES permittee. If the third party fails to perform the minimum measure, the requirements will be enforceable against the third party. In addition, the NPDES permitting authority could reopen the operator-permittee's permit under § 122.62 and modify the permit to make the operator responsible for implementing the measure. A new paragraph has been added to § 122.62 to clarify that the permit may be reopened in such circumstances.

Today's rule also provides that the operator-permittee is not conditionally responsible where it is the State NPDES permitting authority itself that fails to implement the measure. The permitting authority does not need to issue a permit to itself (i.e., to the same State agency that issues the permit) for the sole purpose of relieving the small MS4 from responsibility in the event the State agency does not satisfy its obligation to implement a measure. EPA does not believe that the small MS4 should be responsible in the situation where the NPDES permit issued to the small MS4 operator recognizes that the State agency that issues the permit is responsible for implementing a measure. If the State does fail to implement the measure, the State agency could be held accountable for its commitment in the permit to implement the measure. Where the State does not fulfill its responsibility to implement a measure, a citizen also could petition for withdrawal of the State's NPDES program or it could petition to have the MS4's permit reopened to require the MS4 operator to implement the measure.

EPA notes that not every State program that addresses erosion and sediment control from construction sites will be adequate to satisfy the requirement that each regulated small MS4 have a program to the extent required by § 122.34(b)(4). For example, although all NPDES States are required to issue NPDES permits for construction activity that disturbs greater than one acre, the State's NPDES permit program will not necessarily be extensive enough to satisfy a regulated small MS4's obligation under § 122.34(b)(4). NPDES States will not necessarily be implementing all of the required elements of that minimum measure, such as procedures for site plan review in each jurisdiction required to develop a program and procedures for receipt and consideration of information submitted by the public on individual construction sites. In order for a State erosion and sediment control program to satisfy a small MS4 operator's obligation to implement § 122.34(b)(4), the State program would have to include all of the elements of that minimum measure.

Where the operator-permittee is itself performing one or more of the minimum measures, the operator-permittee remains responsible for all of the reporting requirements under § 122.34(f)(3). The operator-permittee's reports should identify each entity that is performing the control measures within the geographic jurisdiction of the regulated small MS4. If the other entity also operates a regulated MS4 and files reports on the progress of implementation of the measures within the geographic jurisdiction of the MS4, then the operator-permittee need not include that same information in its own reports.

If the other entity operates a regulated MS4 and is performing all of the minimum measures for the permittee, the permittee is not required to file the reports required by § 122.34(f)(3). This relief from reporting is specified in § 122.35(a).

Section 122.35 addresses the concerns of some commenters who sought relief for governmental facilities that are classified as small MS4s under today's rule. These facilities frequently discharge storm water through another regulated MS4 and could be regulated by that MS4's program. For example, a State owned office complex that operates its storm sewer system in an urbanized area will be regulated as an MS4 under today's rule even though its system may be subject to the storm water controls of the municipality in

which it is located. Today's rule specifically revised the definition of MS4 to recognize that different levels of government often operate MS4s and that each such separate entity (including the federal government) should be responsible for its discharges. If both MS4s agree, the downstream MS4 can develop a storm water management program that regulates the discharge from both MS4s. The upstream small MS4 operator still must submit an NOI that identifies the entity on which the upstream small MS4 operator is relying to satisfy its permit obligations. No reports are required from the upstream small MS4 operator, but the upstream operator must remain in compliance with the downstream MS4 operator's storm water management program. This option allows small MS4s to work together to develop one storm water management program that satisfies the permit obligations of both. If they cannot agree, the upstream small MS4 operator must develop its own program.

As mentioned previously, comments from federal facilities and State organizations that operate MS4s requested that their permit requirements differ from those of MS4s that are political subdivisions of States (cities, towns, counties, etc.). EPA acknowledges that there are differences; e.g., many federal and State facilities do not serve a resident population and thus might require a different approach to public education. EPA believes, however, that MS4s owned by State and federal governments can develop storm water management plans that address the minimum measures. Federal and State owned small MS4s may choose to work with adjacent municipally owned MS4s to develop a unified plan that addresses all of the required measures within the jurisdiction of all of the contiguous MS4s. The options in § 122.35 minimize the burden on small MS4s that are covered by another MS4's program.

One commenter recommended that if one MS4 discharges into a second MS4, the operator of the upstream MS4 should have to provide a copy of its NOI or permit application to the operator of the receiving MS4. EPA did not adopt this recommendation because the NOI and permit application will be publicly available; but EPA does recommend that NPDES permitting authorities consider it as a possible permit requirement. The commenter also suggested that monitoring data should be collected by the upstream MS4 and provided to the downstream MS4. EPA is not adopting such a uniform monitoring requirement because EPA believes it is more appropriate to let the MS4 operators work out the need for such data. If necessary, the downstream MS4s might want to make such data a condition to allowing the upstream MS4 to connect to its system.

v. Joint Permit Programs. Many commenters supported allowing the operators of small MS4s to apply as co-permittees so they each would not have to develop their own storm water management program. Today's rule specifically allows regulated small MS4s to join with either other small MS4s regulated under § 122.34(d) or with medium and large MS4s regulated under § 122.26(d).

As is discussed in the previous section, regulated small MS4s may indicate in their NOIs that another entity is performing one or more of its required minimum control measures. Today's rule under § 122.33(b)(1) also specifically allows the operators of regulated small MS4s to jointly submit an NOI. The joint NOI must clearly indicate which entity is required to implement which control measure in each geographic jurisdiction within the service area of the entire small MS4. The operator of each regulated small MS4 remains responsible for the implementation of each minimum measure for its MS4 (unless, as is discussed in the previous section above, the permit recognizes that another entity is responsible for completing the measure.) The joint NOI, therefore, is legally equivalent to each entity submitting its own NOI. EPA is, however, revising the rule language to specifically authorize the joint submission of NOIs in response to comments that suggested that such explicit authorization might encourage programs to be coordinated on a watershed basis.

Section 122.33(b)(2)(iii) authorizes regulated small MS4s to jointly apply for an individual permit to implement today's rule, where allowed by an NPDES permitting authority. The permit application should contain sufficient information to allow the permitting authority to allocate responsibility among the parties under one of the two permitting options in §§ 122.33(b)(2)(i) and (ii).

Section 122.33(b)(3) of today's rule also allows an operator of a regulated small MS4 to join as a co-permittee in an existing NPDES permit issued to an adjoining medium or large MS4 or source designated under the existing storm water program. This co-permittee option applies only with the agreement of all co-permittees. Under this co-permittee arrangement, the operator of the regulated small MS4 must comply with the terms and conditions of the applicable permit rather than the permit condition requirements of § 122.34 of today's rule. The regulated small MS4 that wishes to be a co-permittee must comply with the applicable requirements of § 122.26(d), but would not be required to fulfill all the permit application requirements applicable to medium and large MS4s. Specifically, the regulated small MS4 is not required to comply with the application requirements of § 122.26(d)(1)(iii) (Part 1 source identification), § 122.26 (d)(1)(iv) (Part 1 discharge characterization), and § 122.26(d)(2)(iii) (Part 2 discharge characterization data). Furthermore, the regulated small MS4 operator could satisfy the requirements in § 122.26(d)(1)(v) (Part 1 management programs) and § 122.26(d)(2)(iv) (Part 2 proposed management program) by referring to the adjoining MS4 operator's existing plan. An operator pursuing this option must describe in the permit modification request how the adjoining MS4's storm water program addresses or needs to be supplemented in order to adequately address discharges from the MS4. The request must also explain the role of the small MS4 operator in coordinating local storm water activities and describe the resources available to accomplish the storm water management plan.

EPA sought comments regarding the appropriateness of the application requirements in these subsections of § 122.26(d). One commenter stated that newly regulated smaller MS4s should not be required to meet the existing regulations' Part II application requirements under § 122.26(d) regarding the control of storm water discharges from industrial activity. EPA disagrees. The smaller MS4 operators designated for regulation in today's rule may satisfy this requirement by referencing the legal authority of the already regulated MS4 program to the extent the newly regulated MS4 will rely on such legal authority to satisfy its permit requirements. If the smaller MS4 operator plans to rely on its own legal authorities, it must identify it in the application. If the smaller MS4 operator does not elect to use its own legal authority, they may file an individual permit application for an alternate program under § 122.33(b)(2)(ii).

The explanatory language in § 122.33(b)(3) recommends that the smaller MS4s designated under today's rule identify how an existing plan ''would need to be supplemented in order to adequately address your discharges.'' One commenter suggested that this must be regulatory language and not guidance. EPA disagrees that this needs to be mandatory language.

Since many of the smaller MS4s designated today are ''donut holes'' within the geographic jurisdiction of an already regulated MS4, the larger MS4's program generally will be adequate to address the newly regulated MS4's discharges. The small MS4 applicant should consider the adequacy of the existing MS4's program to address the smaller MS4's water quality needs, but EPA is not imposing specific requirements. Where circumstances suggest that the existing program is inadequate with respect to the newly designated MS4 and the applicant does not address the issue, the NPDES permitting authority must require that the existing program be supplemented.

Commenters recommended that the application deadline for smaller MS4s designated today be extended so that existing regulated MS4s would not have to modify their permit in the middle of their permit term, provided that permit renewal would occur within a reasonable time (12 to 18 months) of the deadline. In response, EPA notes that today's rule allows operators of newly designated small MS4s up to three years and 90 days from the promulgation of today's rule to submit an application to be covered under the permit issued to an already regulated MS4. The permitting authority has a reasonable time after receipt of the application to modify the existing permit to include the newly designated source. If an existing MS4's permit is up for renewal in the near future, the operator of a newly designated small MS4 may take that into account when timing its application and the NPDES permitting authority may take that into account when processing the application.

Another commenter suggested that the rule should include a provision to allow permit application requirements for smaller MS4s designated today to be determined by the permitting authority to account for the particular needs/wants of an already regulated MS4 operator. EPA does not believe that the regulations should specifically require this approach. When negotiating whether to include a newly designated MS4 in its program, the already regulated MS4 operator may require the newly designated MS4's operator to provide any information that is necessary.

The co-permitting approach allows small MS4s to take advantage of existing programs to ease the burden of creating their own programs. The operators of regulated small MS4s, however, may find it simpler to apply for a program under today's rule, and to identify the medium or large MS4 operator that is implementing portions of its § 122.34(b) minimum measures.

d. Evaluation and Assessment

Under today's rule, operators of regulated small MS4s are required to evaluate the appropriateness of their identified BMPs and progress toward achieving their identified measurable goals. The purpose of this evaluation is to determine whether or not the MS4 is meeting the requirements of the minimum control measures. The NPDES permitting authority is responsible for determining whether and what types of monitoring needs to be conducted and may require monitoring in accordance with State/Tribe monitoring plans appropriate to the watershed. EPA does not encourage requirements for ''end-of-pipe'' monitoring for regulated small MS4s. Rather, EPA encourages permitting authorities to carefully examine existing ambient water quality and assess data needs. Permitting authorities should consider a combination of physical, chemical, and biological monitoring or the use of other environmental indicators such as exceedance frequencies of water quality standards, impacted dry weather flows, and increased flooding frequency. (Claytor, R. and W. Brown. 1996. *Environmental Indicators to Assess Storm Water Control Programs and Practices.* Center for Watershed Protection, Silver Spring, MD.) Section II.L., Water Quality Issues, discusses monitoring in greater detail.

As recommended by the Intergovernmental Task Force on Monitoring Water Quality (ITFM), the NPDES permitting authority is encouraged to consider the following watershed objectives in determining monitoring requirements: (1) To characterize water quality and ecosystem health in a watershed over time, (2) to determine causes of existing and future water quality and ecosystem health problems in a watershed and develop a watershed management program, (3) to assess progress of watershed management program or effectiveness of pollution prevention and control practices, and (4) to support documentation of compliance with permit conditions and/or water quality standards. With these objectives in mind, the Agency encourages participation in group monitoring programs that can take advantage of existing monitoring programs undertaken by a variety of governmental and nongovernental entities. Many States may already have a monitoring program in effect on a watershed basis. The ITFM report is included in the docket for today's rule (Intergovernmental Task Force on Monitoring Water Quality. 1995. *The Strategy for Improving Water-Quality Monitoring in the United States: Final Report of the Intergovernmental Task Force on Monitoring Water Quality.* Copies can be obtained from: U.S. Geological Survey, Reston, VA.).

EPA expects that many types of entities will have a role in supporting group monitoring activities—including federal agencies, State agencies, the public, and various classes or categories of point source dischargers. Some regulated small MS4s might be required to contribute to such monitoring efforts. EPA expects, however, that their participation in monitoring activities will be relatively limited. For purposes of today's rule, EPA recommends that, in general, NPDES permits for small MS4s should not require the conduct of any additional monitoring beyond monitoring that the small MS4 may be already performing. In the second and subsequent permit terms, EPA expects that some limited ambient monitoring might be appropriately required for perhaps half of the regulated small MS4s. EPA expects that such monitoring will only be done in identified locations for relatively few pollutants of concern. EPA does not anticipate ''end-of-pipe'' monitoring requirements for regulated small MS4s.

EPA received a wide range of comments on this section of the rule. Some commenters believe that EPA should require monitoring; others want a strong statement that the newly regulated small MS4s should not be required to monitor. Many commenters raised questions about exactly what EPA expects MS4s to do to evaluate and assess their BMPs. EPA has intentionally written today's rule to provide flexibility to both MS4s and permitting authorities regarding appropriate evaluation and assessment. Permitting authorities can specify monitoring or other means of evaluation when writing permits. If additional requirements are not specified, MS4s can decide what they believe is the most appropriate way to evaluate their storm water management program. As mentioned above, EPA expects that the necessity for monitoring and its extent may change from permit cycle to permit cycle. This is another reason for making the evaluation and assessment rule requirements very flexible.

i. Recordkeeping. The NPDES permitting authority is required to include at least the minimum appropriate recordkeeping conditions in each permit. Additionally, the NPDES permitting authority can specify that permittees develop, maintain, and/or

submit other records to determine compliance with permit conditions. The MS4 operator must keep these records for at least 3 years but is not required to submit records to the NPDES permitting authority unless specifically directed to do so. The MS4 operator must make the records, including the storm water management program, available to the public at reasonable times during regular business hours (see 40 CFR 122.7 for confidentiality provision). The MS4 operator is also able to assess a reasonable charge for copying and to establish advance notice requirements for members of the public.

EPA received a comment that questioned EPA's authority to require MS4s to make their records available to the public. EPA disagrees with the commenter and believes that the CWA does give EPA the authority to require that MS4 records be available. It is also more practical for the public to request records directly from the MS4 than to request them from EPA who would then make the request to the MS4. Based on comments, EPA revised the proposed rule so as not to limit the time for advance notice requirements to 2 business days.

ii. Reporting. Under today's rule, the operator of a regulated small MS4 is required to submit annual reports to the NPDES permitting authority for the first permit term. For subsequent permit terms, the MS4 operator must submit reports in years 2 and 4 unless the NPDES permitting authority requires more frequent reports. EPA received several comments supporting this timing for report submittal. Other commenters suggested that annual reports during the first permit cycle are too burdensome and not necessary. EPA believes that annual reports are needed during the first 5-year permit term to help permitting authorities track and assess the development of MS4 programs, which should be established by the end of the initial term. Information contained in these reports can also be used to respond to public inquiries.

The report must include (1) the status of compliance with permit conditions, an assessment of the appropriateness of identified BMPs and progress toward achieving measurable goals for each of the minimum control measures, (2) results of information collected and analyzed, including monitoring data, if any, during the reporting period, (3) a summary of what storm water activities the permittee plans to undertake during the next reporting cycle, and (4) a change in any identified measurable goal(s) that apply to the program elements.

The NPDES permitting authority is encouraged to provide a brief two-page reporting format to facilitate compiling and analyzing the data from submitted reports. EPA does not believe that submittal of a brief annual report of this nature is overly burdensome, and has not changed the required reporting time frame from the proposal. The permitting authority will use the reports in evaluating compliance with permit conditions and, where necessary, will modify the permit conditions to address changed conditions.

iii. Permit-As-A-Shield. Section 122.36 describes the scope of authorization (i.e. ''permit-as-a-shield'') under an NPDES permit as provided by section 402(k) of the CWA. Section 402(k) provides that compliance with an NPDES permit is deemed compliance, for purposes of enforcement under CWA sections 309 and 505, with CWA sections 301, 302, 306, 307, and 403, except for any standard imposed under section 307 for toxic pollutants injurious to human health.

EPA's Policy Statement on Scope of Discharge Authorization and Shield Associated with NPDES Permits, originally issued on July 1, 1994, and revised on April 11, 1995, provides additional information on this matter.

e. Other Applicable NPDES Requirements

Any NPDES permit issued to an operator of a regulated small MS4 must also include other applicable NPDES permit requirements and standard conditions, specifically the applicable requirements and conditions at 40 CFR 122.41 through 122.49. Reporting requirements for regulated small MS4s are governed by § 122.34 and not the existing requirements for medium and large MS4s at § 122.42(c). In addition, the NPDES permitting authority is encouraged to consult the Interim Permitting Approach, issued on August 1, 1996. The discussion on the Interim Permitting Approach in Section II.L.1, Water Quality Based Effluent Limits, provides more information. The provisions of §§ 122.41 through 122.49 establish permit conditions and limitations that are broadly applicable to the entire range of NPDES permits. These provisions should be interpreted in a manner that is consistent with provisions that address specific classes or categories of discharges. For example, § 122.44(d) is a general requirement that each NPDES permit shall include conditions to meet water quality standards. This requirement will be met by the specific approach outlined in today's rule for the implementation of BMPs. BMPs are the most appropriate form of effluent limitations to satisfy technology requirements and water quality-based requirements in MS4 permits (see the introduction to Section II.H.3, Municipal Permit Requirements, Section II.H.3.h, Reevaluation of Rule, and the discussion of the Interim Permitting Policy in Section II.L.1. below).

f. Enforceability

NPDES permits are federally enforceable. Violators may be subject to the enforcement actions and penalties described in CWA sections 309, 504, and 505 or under similar water pollution enforcement provisions of State, tribal or local law. Compliance with a permit issued pursuant to section 402 of the Clean Water Act is deemed compliance, for purposes of sections 309 and 505, with sections 301, 302, 306, 307, and 403 (except any standard imposed under section 307 for toxic pollutants injurious to human health).

g. Deadlines

Today's final rule includes ''expeditious deadlines'' as directed by CWA section 402(p)(6). In proposed § 122.26(e), the permit application for the ''ISTEA'' facilities was maintained as August 7, 2001 and the permit application deadline for storm water discharges associated with other construction activity was established as 3 years and 90 days from the final rule date. In proposed § 122.33(c)(1), operators of regulated small MS4s were required to seek permit coverage within 3 years and 90 days from the date of publication of the final rule. In proposed § 122.33(c)(2), operators of regulated small MS4s designated by the NPDES permitting authority on a local basis under § 122.32(a)(2) must seek coverage under an NPDES permit within 60 days of notice, unless the NPDES permitting authority specifies a later date.

In order to increase the clarity of today's final rule, EPA has changed the location of some of the above requirements. All application deadlines for both Phase I and Phase II are now listed or referenced in § 122.26(e). Section 122.26(e)(1) contains the deadlines for storm water associated with industrial activity. Paragraph (i) has been changed to correct a typographical error. Paragraph (ii) has been revised to reflect the changed application date for ''ISTEA'' facilities. (See discussion in section I.3, ISTEA Sources). The application deadline for storm water discharges associated with other construction activity is now in a new § 122.26(e)(8). The application deadline for regulated small MS4s

Appendix C2

Prohibition of Non-Storm Water Discharges
(Federal Register Volume 63, No. 128, July 6, 1998, Notices, pp. 36500-36501)

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meeting one or more of these conditions.

Part II. Notice of Intent Requirements

A. Deadlines for Notification

1. Except as provided in Parts II.A.3, II.A.4, II.A.5 or II.A.6 below, parties defined as operators (see definition in Part IX.N) due to their operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications, must submit a Notice of Intent (NOI) in accordance with the requirements of this Part at least two (2) days prior to the commencement of construction activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities).

2. Except as provided in Parts II.A.3, II.A.4, II.A.5 or II.A.6 below, parties defined as operators (see definition in Part IX.N) due to their day-to-day operational control over activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan or other permit conditions (e.g., general contractor, erosion control contractor) must submit a NOI at least two (2) days prior to commencing work on-site.

3. For storm water discharges from construction projects where the operator changes, including instances where an operator is added after a NOI has been submitted under Parts II.A.1 or II.A.2, the new operator must submit a NOI at least two (2) days before assuming operational control over site specifications or commencing work on-site.

4. Operators are not prohibited from submitting late NOIs. When a late NOI is submitted, authorization is only for discharges that occur after permit coverage is granted. The Agency reserves the right to take appropriate enforcement actions for any unpermitted activities that may have occurred between the time construction commenced and authorization of future discharges is granted (typically 2 days after a complete NOI is submitted).

5. Operators of on-going construction projects as of the effective date of this permit which received authorization to discharge for these projects under the 1992 baseline construction general permit must:

a. Submit a NOI according to Part II.B. within 90 days of the effective date of this permit. If the permittee is eligible to submit a Notice of Termination (e.g., construction is finished and final stabilization has been achieved) before the 90th day, a new NOI is not required to be submitted;

b. For the first 90 days from the effective date of this permit, comply with the terms and conditions of the 1992 baseline construction general permit they were previously authorized under; and

c. Update their storm water pollution prevention plan to comply with the requirements of Part IV within 90 days after the effective date of this permit.

6. Operators of on-going construction projects as of the effective date of this permit which did *not* receive authorization to discharge for these projects under the 1992 baseline construction general permit must:

a. Prepare and comply with an interim storm water pollution prevention plan in accordance with the 1992 baseline construction general permit prior to submitting an NOI;

b. Submit a NOI according to Part II.B; and

c. Update their storm water pollution prevention plan to comply with the requirements of Part IV within 90 days after the effective date of this permit.

B. Contents of Notice of Intent (NOI)

1. Use of Revised NOI Form

The revised NOI form [EPA Form 3510–9] shall be signed in accordance with Part VI.G of this permit and shall include the following information:

a. The name, address, and telephone number of the operator filing the NOI for permit coverage;

b. An indication of whether the operator is a Federal, State, Tribal, private, or other public entity;

c. The name (or other identifier), address, county, and latitude/longitude of the construction project or site;

d. An indication of whether the project or site is located on Indian Country lands;

e. Confirmation that a storm water pollution prevention plan (SWPPP) has been developed or will be developed prior to commencing construction activities, and that the SWPPP will be compliant with any applicable local sediment and erosion control plans. Copies of SWPPPs or permits should *not* be included with the NOI submission;

f. Optional information: the location where the SWPPP may be viewed and the name and telephone number of a contact person for scheduling viewing times;

g. The name of the receiving water(s);

h. Estimates of project start and completion dates, and estimates of the number of acres of the site on which soil will be disturbed (if less than 1 acre, enter ''1'');

i. Based on the instructions in Addendum A, whether any listed or proposed threatened or endangered species, or designated critical habitat, are in proximity to the storm water discharges or storm water discharge-related activities to be covered by this permit;

j. Under which section(s) of Part I.B.3.e. (Endangered Species) the applicant is certifying eligibility; and

Note that as of the effective date of this permit, reporting of information relating to the preservation of historic properties has been reserved and is not required at this time. Such reservation in no way relieves applicants or permittees from any otherwise applicable obligations or liabilities related to historic preservation under State, Tribal or local law. After further discussions between EPA and the Advisory Council on Historic Preservation, the Agency may modify the permit. Any such modification may affect future Notice of Intent reporting requirements.

C. Where To Submit

1. NOIs must be signed in accordance with Part VI.G. and sent to the following address: Storm Water Notice of Intent (4203), US EPA, 401 M Street, SW, Washington, DC 20460.

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

A. Prohibition on Non-Storm Water Discharges

1. Except as provided in Parts I.B.2 or 3 and III.A.2 or 3, all discharges covered by this permit shall be composed entirely of storm water associated with construction activity.

2. Discharges of material other than storm water that are in compliance with an NPDES permit (other than this permit) issued for that discharge may be discharged or mixed with discharges authorized by this permit.

3. The following non-storm water discharges from active construction sites are authorized by this permit provided the non-storm water component of the discharge is in compliance with Part IV.D.5 (non-storm water discharges): discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles where detergents are not used; water used to control dust in accordance with Part IV.D.2.c.(2); potable water sources including waterline flushings; routine external building wash down which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air

conditioning condensate; uncontaminated ground water or spring water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

B. Releases in Excess of Reportable Quantities

The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR 110, 40 CFR 117 and 40 CFR 302. Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR 110, 40 CFR 117 or 40 CFR 302, occurs during a 24 hour period:

1. The permittee is required to notify the National Response Center (NRC) (800–424–8802; in the Washington, DC, metropolitan area call 202–426–2675) in accordance with the requirements of 40 CFR 110, 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

2. The storm water pollution prevention plan required under Part IV of this permit must be modified within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

C. Spills

This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

D. Discharge Compliance With Water Quality Standards

Operators seeking coverage under this permit shall not be causing or have the reasonable potential to cause or contribute to a violation of a water quality standard. Where a discharge is already authorized under this permit and is later determined to cause or have the reasonable potential to cause or contribute to the violation of an applicable water quality standard, the Director will notify the operator of such violation(s). The permittee shall take all necessary actions to ensure future discharges do not cause or contribute to the violation of a water quality standard and document these actions in the storm water pollution prevention plan. If violations remain or re-occur, then coverage under this permit may be terminated by the Director, and an alternative general permit or individual permit may be issued. Compliance with this requirement does not preclude any enforcement activity as provided by the Clean Water Act for the underlying violation.

E. Responsibilities of Operators

Permittees may meet one or both of the operational control components in the definition of ''operator'' found in Part IX.N. Either Parts III.E.1 or III.E.2 or both will apply depending on the type of operational control exerted by an individual permittee. Part III.E.3 applies to all permittees.

1. Permittees with operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications (e.g., developer or owner), must:

a. Ensure the project specifications that they develop meet the minimum requirements of Part IV (Storm Water Pollution Prevention Plans (SWPPP)) and all other applicable conditions;

b. Ensure that the SWPPP indicates the areas of the project where they have operational control over project specifications (including the ability to make modifications in specifications), and ensure all other permittees implementing portions of the SWPPP impacted by any changes they make to the plan are notified of such modifications in a timely manner; and

c. Ensure that the SWPPP for portions of the project where they are operators indicates the name and NPDES permit number for parties with day-to-day operational control of those activities necessary to ensure compliance with the SWPPP or other permit conditions. If these parties have not been identified at the time the SWPPP is initially developed, the permittee with operational control over project specifications shall be considered to be the responsible party until such time as the authority is transferred to another party (e.g., general contractor) and the plan updated.

2. Permittee(s) with day-to-day operational control of those activities at a project which are necessary to ensure compliance with a SWPPP for the site or other permit conditions (e.g., general contractor) must:

a. Ensure that the SWPPP for portions of the project where they are operators meets the minimum requirements of Part IV (Storm Water Pollution Prevention Plan) and identifies the parties responsible for implementation of control measures identified in the plan;

b. Ensure that the SWPPP indicates areas of the project where they have operational control over day-to-day activities;

c. Ensure that the SWPPP for portions of the project where they are operators indicates the name and NPDES permit number of the party(ies) with operational control over project specifications (including the ability to make modifications in specifications);

3. Permittees with operational control over only a portion of a larger construction project (e.g., one of four homebuilders in a subdivision) are responsible for compliance with all applicable terms and conditions of this permit as it relates to their activities on their portion of the construction site, including protection of endangered species and implementation of BMPs and other controls required by the SWPPP. Permittees shall ensure either directly or through coordination with other permittees, that their activities do not render another party's pollution controls ineffective. Permittees must either implement their portions of a common SWPPP or develop and implement their own SWPPP.

F. Consistency With the Texas Coastal Management Program

This permit does not relieve permittees whose construction project is located within the boundary of the Texas Coastal Management Program of their responsibility to insure consistency with all applicable requirements of this State program. While pre-construction approval of development projects is not within the jurisdiction of the Federal NPDES permit program, State or local pre-construction project approvals and/or permits may be required. The permittee's Storm Water Pollution Prevention Plan must be consistent with any storm water discharge-related requirements established pursuant to, or necessary to be consistent with, the Texas Coastal Management Program. This permit may be reopened, upon petition by the State, to include more stringent discharge requirements applying to areas within the State's designated coastal zone.

The Texas Coastal Management Program boundary covers part or all of the following Texas Counties: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jackson, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, Victoria, and Willacy. To determine if a construction project is located within the Texas Coastal Zone, and if so, the applicable requirements of the Texas Coastal Management Program, please

Appendix C3

Threatened and Endangered Species and Historic Places Issues for Construction Activities
(Federal Register Volume 63, No. 128, July 6, 1998, Notices, pp. 36491-36500)

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operator. EPA believes that the general contractor, being a professional in the building industry, should be the entity rather than the individual who is better equipped to meet the requirements of both applying for permit coverage and developing and properly implementing a SWPPP. However, individuals would meet the definition of ''operator'' and require permit coverage in instances where they perform general contracting duties for construction of their personal residences.

► *Owner and Contractor as Co-Permittees.* The owner retains control over any changes to site plans, SWPPPs, or storm water conveyance or control designs; but the contractor is responsible for overseeing actual earth disturbing activities and daily implementation of SWPPP and other permit conditions. In this case, both parties may need coverage.

However, you are probably not an operator and subsequently do not need permit coverage if:

► You are a subcontractor hired by, and under the supervision of, the owner or a general contractor (i.e., if the contractor directs your activities on-site, you probably are not an operator); or

► your activities on site result in earth disturbance and you are not legally a subcontractor, but a SWPPP specifically identifies someone other than you (or your subcontractor) as the party having operational control to address the impacts your activities may have on storm water quality (i.e., another operator has assumed responsibility for the impacts of your construction activities). This particular provision will apply to most utility service line installations. For further information concerning whether utility service line installations meet the definition of operator and require permit coverage, see the discussion under ''Installation of Utility Service Lines'' in Section VIII, Summary Response to Public Comments of the Fact Sheet.

In addition, for purposes of this permit and determining who is an operator, ''owner'' refers to the party that owns the structure being built. Ownership of the land where construction is occurring does not necessarily imply the property owner is an operator (e.g., a landowner whose property is being disturbed by construction of a gas pipeline). Likewise, if the erection of a structure has been contracted for, but possession of the title or lease to the land or structure is not to occur until after construction, the would-be owner may not be considered an operator (e.g., having a house built by a residential homebuilder).

My Project Will Disturb Less Than Five Acres, but it May Be Part of a ''Larger Common Plan of Development or Sale.'' How Can I Tell and What Must I do?

If your smaller project is part of a larger common plan of development or sale that collectively will disturb five or more acres (e.g., you are building on six half-acre residential lots in a 10-acre development or are putting in a parking lot in a large retail center) you need permit coverage. The ''plan'' in a common plan of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. You must still meet the definition of operator in order to be required to get permit coverage, regardless of the acreage you personally disturb. As a subcontractor, it is unlikely you would need a permit.

For some situations where less than five acres of the original common plan of development remain undeveloped, a permit may not be needed for the construction projects ''filling in'' the last parts of the common plan of development. A case in which a permit would not be needed is where several empty lots totaling less than five acres remain after the rest of the project had been completed, providing stabilization had also been completed for the entire project. However, if the total area of all the undeveloped lots in the original common plan of development was more than five acres, a permit would be needed.

When Can You Consider Future Construction on a Property To Be Part of a Separate Plan of Development or Sale?

In many cases, a common plan of development or sale consists of many small construction projects that collectively add up to five (5) or more acres of total disturbed land. For example, an original common plan of development for a residential subdivision might lay out the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for development. All these areas would remain part of the common plan of development or sale until the intended construction occurs. After this initial plan is completed for a particular parcel, any subsequent development or redevelopment of that parcel would be regarded as a new plan of development, and would then be subject to the five-acre cutoff for storm water permitting.

What Must I do to Satisfy The Permit Eligibility Requirements Related to Endangered Species?

In order to be eligible for this permit, you must follow the procedures and examples found in Addendum A for the protection of endangered species. You cannot submit your NOI until you are able to certify your eligibility for the permit. Enough lead time should be built into your project schedule to accomplish these procedures. If another operator has certified eligibility for the project (or at least the portion of the project you will be working on) in his NOI, you will usually be able to rely on his certification of project eligibility and not have to repeat the process. EPA created this ''coat tail'' eligibility option for protection of endangered species to allow the site developer/owner to obtain up-front ''clearance'' for a project, thereby avoiding duplication of effort by his contractors and unnecessary delays in construction.

What Does the Permit Require Regarding Historic Preservation?

Today's permit does not currently impose requirements related to historic preservation, though EPA may modify the permit at a later date after further discussions with the Advisory Council on Historic Preservation. Therefore, under today's permit, EPA will conduct consultations as it did under the pre-existing Baseline Construction General Permit on a case-by-case basis as needed. Removal of the proposed permit provisions related to historic preservation in no way relieves applicants and permittees of their obligations to comply with applicable State, Tribal or local laws for the preservation of historic properties. EPA reminds permittees that according to section 110(k) of the National Historic Preservation Act (NHPA), an intentional action to significantly adversely affect historic resources with intent to avoid Federal historic preservation requirements may jeopardize future permit coverage for such a permittee.

How Many Notices of Intent (NOIs) Must I Submit? Where and When Are They Sent?

You only need to submit one NOI to cover all activities on any one common plan of development or sale. The site map you develop for the storm water pollution prevention plan identifies which parts of the overall project are

under your control. For example, if you are a homebuilder in a residential development, you need submit only one NOI to cover all your lots, even if they are on opposite sides of the development.

The NOI must be postmarked two days before you begin work on site. The address for submitting NOIs is found in the instruction portion of the NOI form and in Part II.C. of the CGP. You must also look in Part X of the permit to determine if copies of the NOI form are to be sent to a State or Indian Tribe.

If I Am on an ongoing Construction Project, do I Have to Fill in a New NOI To Be Covered by the Permit?

Yes, if you are on an ongoing construction project, a construction project which started prior to the effective date of this permit, you must complete a revised NOI Form (EPA Form 3510–9) to obtain coverage under this permit. However, applicants who have previously submitted an NOI for permit coverage prior to the effective date of this permit have the option to leave the section regarding Addendum A on endangered species blank unless there is a potential impact on endangered species or their habitat.

How do I Know Which Permit Conditions Apply to Me?

You are responsible for complying with all parts of the permit that are applicable to the construction activities you perform. Part III.E. of the permit defines the roles of various operators at a site. In addition, several States and Indian Tribes require alternative or additional permit conditions, and these can be found in Part X of the permit.

Do I Have Flexibility in Preparing the Storm Water Pollution Prevention Plan (SWPPP) and Selecting Best Management Practices (BMPs) for My Site?

Storm water pollution prevention plan requirements were designed to allow maximum flexibility to develop the needed storm water controls based on the specifics of the site. Some of the factors you might consider include: more stringent local development requirements and/or building codes; precipitation patterns for the area at the time the project will be underway; soil types; slopes; layout of structures for the site; sensitivity of nearby water bodies; safety concerns of the storm water controls (e.g., potential hazards of water in storm water retention ponds to the safety of children; the potential of drawing birds to retention ponds and the hazards they pose to aircraft); and coordination with other site operators.

Must Every Permittee Have His Own Separate SWPPP or Is a Joint Plan Allowed?

The only requirement is that there be at least one SWPPP for a site which incorporates the required elements for all operators, but there can be separate plans if individual permittees so desire. EPA encourages permittees to explore possible cost savings by having a joint SWPPP for several operators. For example, the prime developer could assume the inspection responsibilities for the entire site, while each homebuilder shares in the installation and maintenance of sediment traps serving common areas.

If a Project Will Not Be Completed Before This Permit Expires, How Can I Keep Permit Coverage?

If the permit is reissued or replaced with a new one before the current one expires, you will need to comply with whatever conditions the new permit requires in order to transition coverage from the old permit. This usually includes submitting a new NOI. If the permit expires before a replacement permit can be issued, the permit will be administratively ''continued.'' You are automatically covered under the continued permit, without needing to submit anything to EPA, until the earliest of:

► The permit being reissued or replaced;

► Submittal of a Notice of Termination (NOT);

► Issuance of an individual permit for your activity; or

► The Director issues a formal decision not to reissue the permit, at which time you must seek coverage under an alternative permit.

When Can I Terminate Permit Coverage? Can I Terminate Coverage (i.e., Liability for Permit Compliance) Before the Entire Project Is Finished?

You can submit an NOT for your portion of a site providing: (1) You have achieved final stabilization of the portion of the site for which you are a permittee (including, if applicable, returning agricultural land to its pre-construction agricultural use); (2) another operator/permittee has assumed control according to Part VI.G.2.c. of the permit over all areas of the site that have not been finally stabilized which you were responsible for (for example, a developer can pass permit responsibility for lots in a subdivision to the homebuilder who purchases those lots, providing the homebuilder has filed his own NOI); or (3) for residential construction only, you have completed temporary stabilization and the residence has been transferred to the homeowner.

III. Section 401 Certification and Coastal Zone Management Act

Section 401 of the Clean Water Act states that EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. The Region has received section 401 certification from the appropriate States and Indian Tribes for all facilities covered by today's permits. Additional permit requirements were required as a condition of certification by the State of Texas and by the Pueblos of Isleta, Nambe, Picuris, Pojoaque, Sandia, Tesuque and Santa Clara in New Mexico. These additional permit requirements are contained in Part X of the permits.

The Coastal Zone Management Act (CZMA) requires all Federal permitting actions to be reviewed for consistency with each approved State Coastal Zone Management Plan. Texas is the only State covered by these permits that has an approved Coastal Zone Management Plan. EPA Region 6 has determined that the permit is consistent with the Texas Coastal Zone Management Plan. The Texas Coastal Zone Management Plan procedures for Federal consistency with Coastal Management Program goals and policies (31 TAC 506.12) state that if an activity requiring a state agency or subdivision action above thresholds requires an equivalent Federal permit, the Texas Coastal Coordination Council may determine the consistency of the state agency/subdivision action or the Federal permit, but not both. Permittees whose construction projects are located within the boundary of the Texas Coastal Management Program above thresholds will be required, as a part of pre-construction project approval, to have a consistency review by the Texas Council. An additional consistency review by the Texas Coastal Coordination Council of the storm water discharges from these construction projects covered by today's permit is, therefore, not required.

IV. Endangered Species Protection

A. Background

The Construction General Permit (CGP) also contains conditions to ensure the activities regulated by it are protective of species that are listed under the Endangered Species Act (ESA) as endangered or threatened (known as ''listed species''), and listed species habitat that is designated under

the ESA as critical (''critical habitat''). In addition, the permit's coverage does not extend to discharges and discharge-related activities likely to jeopardize the continued existence of species proposed but not yet listed as endangered or threatened or result in the adverse modification of habitat proposed to be designated critical habitat.

The ESA places several different requirements on activities covered by the CGP. First, section 9 of the ESA and the ESA implementing regulations generally prohibit any person from ''taking'' a listed animal species (e.g., harassing or harming it) unless the take is authorized under the ESA. This prohibition applies to all entities and includes EPA, permit applicants, permittees and the public at large. Second, section 7(a)(2) of the ESA requires that Federal agencies consult with the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) (''the Services'') to insure that any action authorized, funded or carried out by them (also known as ''agency actions'') are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. Jeopardizing the continued existence of a listed species means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers or distribution of that species (*See* 40 CFR 402.02).

The ESA section 7 implementing regulations at 50 CFR 402 apply this consultation requirement to any action authorized by a Federal agency that may affect listed species or critical habitat, including permits. This effect, among other things, can be beneficial, detrimental, direct and indirect. The issuance of the CGP by EPA is thus subject to the ESA section 7(a)(2) consultation requirements. Finally, ESA section 7(a)(1) directs Federal agencies to use their authority to further the purposes of the ESA by carrying out programs for the conservation of listed species, and section 7(a)(4) directs Federal agencies to confer with the Services on Agency actions likely to jeopardize the existence of species proposed but not yet finally listed or result in the adverse modification of critical habitat proposed to be designated.

The ESA regulations provide for two types of consultation: formal and informal. Informal consultation is an optional process that includes discussions, correspondence, etc. between the Services and a Federal agency or a designated non-Federal representative (NFR) to determine whether a Federal action is likely to have an adverse effect on listed species or critical habitat. During informal consultation the Services may suggest modifications to the action that a Federal agency, permit applicant or non-Federal representative could implement to avoid likely adverse effects to listed species or critical habitat. If adverse effects are likely and those effects cannot be addressed through informal consultation, then formal consultation generally occurs.

Also of relevance for the CGP are ESA section 10 incidental taking permits. Section 10 of the ESA allows persons, including non-Federal entities to incidentally take listed animal species, where otherwise prohibited, through the issuance of a permit after development of a habitat conservation plan (HCP). These procedures were developed to allow non-Federal entities such as developers to, among other things, alter habitat without incurring takings liability where take is minimized to the extent practicable.

B. Conditions in the June 2, 1997 Proposed Permit To Protect Species and Critical Habitat

The CGP was proposed with a number of conditions to ensure that storm water discharges and best management practices (BMPs) to control storm water runoff were protective of listed species or critical habitat. Specifically, coverage under the proposed CGP would be granted only under the following circumstances:

1. An applicant's storm water discharges or BMPs to control storm water runoff were not likely to adversely affect listed species (identified in Addendum A of the permit) or critical habitat; or

2. The applicant's activity was previously authorized under § 7 or § 10 of the Endangered Species Act (ESA) and that authorization addressed storm water discharges and BMPs to control storm water runoff; or

3. The applicant's activity was considered as part of a larger, more comprehensive assessment of impacts on endangered and threatened species under § 7 or § 10 of the ESA which accounted for storm water discharges and BMPs to control storm water runoff; or

4. Consultation under § 7 of the ESA was conducted for the applicant's activity which resulted in either a no jeopardy opinion or a written concurrence on a finding of no likelihood of adverse effects; or

5. The applicant's activity was considered as part of a larger, more comprehensive site-specific assessment of impacts on endangered and threatened species by the owner or other operator of the site and that permittee certified eligibility under items 1., 2., 3. or 4. above.

The proposal required that applicants assess the impacts of their ''storm water discharges'' and ''BMPs to control storm water runoff'' on listed species and critical habitat that are located ''in proximity'' to the those discharges and BMPs when developing Storm Water Pollution Prevention Plans (SWPPPs) as part of the application process. The proposed CGP also required applicants to include measures in SWPPPs to protect listed species and critical habitat. ''In proximity'' was defined in Addendum A to include species:

► Located in the path or immediate area through which or over which contaminated point source storm water flows from construction activities to the point of discharge into the receiving water;

► Located in the immediate vicinity of, or nearby, the point of discharge into receiving waters; or

► Located in the area of a site where storm water BMPs are planned or are to be constructed.

EPA also solicited comment on whether the area or scope of impacts to be considered by applicants should be broadened to encompass listed species found on the entire construction site and not just those species found ''in proximity'' as currently defined in Addendum A.

Failure by permittees to abide by measures in their SWPPPs to protect species and critical habitat would invalidate permit coverage. Attached to the proposed permits were instructions (Addendum A) to assist permit applicants in making this inquiry. The proposal indicated that a county-by-county species list would be included in Addendum A of the final permit to assist applicants in determining if listed species might be ''in proximity'' to storm water discharges and BMPs. EPA did not provide a draft species list in proposed Addendum A. Instead, EPA referred commenters to a similar species list that was used for an earlier EPA-issued storm water permit, the Multisector Storm Water General Permit, that was issued on September 29, 1995 (*See* 62 FR 29792, note 12, June 2, 1997).

C. Final CGP Conditions To Protect Listed Species

On April 28, 1997, EPA entered into formal consultation with the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (the ''Services'') for issuance of the CGP. After discussions with the Services, EPA terminated formal consultation and entered into ESA section 7 informal consultation and conferencing with the Fish and Wildlife Service (FWS) and the National Fisheries Service Services (NMFS) on June 11, 1997. On November 4, and 26, 1997, EPA completed ESA informal consultation when NMFS and FWS provided their respective concurrences with EPA's finding that issuance of the CGP was not likely to adversely affect listed species or critical habitat. However, the negotiations on CGP did not consider ongoing construction projects; i.e., construction projects which started prior to the effective date of these permits.

In January, 1998, Region 6 decided to address ESA certification issues for ongoing construction projects before finalizing the permit. In February, 1998, EPA Region 6 began a supplemental informal consultation with FWS and NMFS on language to clarify requirements for ongoing construction activity. EPA Region 6 completed ESA informal section 7 consultation and conferencing when FWS and NMFS provided their concurrences that issuance of these permits is unlikely to adversely affect listed species or critical habitat on June 9, and 15, respectively. With the completion of these consultations, EPA Region 6 has reduced the administrative burden associated with obtaining permit coverage for ongoing construction projects for the federal agencies and the regulated community.

Based on that consultation and in consideration of comments received on the June 2, 1997, proposal, EPA has placed the following conditions in the permit to protect listed species and critical habitat (*See* Part I.B.3.e). Coverage under the CGP is available for construction projects only if:

a. The storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat (Part I.B.3.e.(2)(a)); or

b. Formal or informal consultation with the Services under section 7 of the Endangered Species Act (ESA) has been concluded which addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat and the consultation results in either a no jeopardy opinion or a written concurrence by the Service(s) on a finding that the applicant's storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat. A section 7 consultation may occur in the context of another Federal on (e.g., an ESA section 7 consultation was performed for issuance of a wetlands dredge and fill permit for the project, or as part of a National Environmental Policy Act [NEPA] review); or

c. The applicant's construction activities are covered by a permit under section 10 of the ESA and that permit addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat (Part I.B.3.e.(2)(c)); or

d. The applicant's storm water discharges and storm water discharge-related activities were already addressed in another operator's certification of eligibility under Part I.B.3.e.(2)(a), (b), or (c) which included the applicant's project area. By certifying eligibility under Part I.B.3.e.(2)(d), the applicant agrees to comply with any measures or controls upon which the other operator's certification under Part I.B.3.e.(2)(a), (b) or (c) was based.

The CGP requires that applicants consider effects to listed species and critical habitat when developing SWPPPs and require that those plans include measures, as appropriate, to protect those resources. Failure by permittees to abide by measures in the SWPPPs to protect species and critical habitat may invalidate permit coverage.

This permit requires all projects commencing construction after the effective date of this permit, to follow the procedures provided in Addendum A of the permit when applying for permit coverage. The Director may also require any existing permittee or applicant to provide documentation of eligibility for this permit using the procedures in Addendum A, where EPA or the Fish and Wildlife Services determine that there is a potential impaction on endangered or threatened species or a critical habitat. Nothing in the permit relieves applicants which are under construction as of the effective date of this permit of their obligations they may have to comply with any requirements of the Endangered Species Act.

Addendum A contains instructions to assist permit applicants in making this inquiry. Those instructions require that applicants ascertain: (1) If their construction activities would occur in critical habitat; (2) whether listed species are in the project area; and (3) whether the applicant's storm water discharges and discharge-related activities are likely to adversely affect listed species or critical habitat. If adverse effects are likely, then applicants would have to meet one of the eligibility requirements of Part I.B.3.e.(2)(b)–(d) (paragraphs b., c., and d. above) to receive permit coverage. ''Discharge-related activities'' include activities which cause point source storm water pollutant discharges including but not limited to excavation, site development, and other surface disturbing activities, and measures to control, reduce or prevent storm water pollution including the siting, construction and operation of BMPs. The ''project area'' includes:

1. Area(s) on the construction site where storm water discharges originate and flow towards the point of discharge into the receiving waters (this includes the entire area or areas where excavation, site development, or other ground disturbance activities occur), and the immediate vicinity;

2. Area(s) where storm water discharges flow from the construction site to the point of discharge into receiving waters;

3. Area(s) where storm water from construction activities discharges into the receiving waters and the area(s) in the immediate vicinity of the point of discharge; and

4. Area(s) where storm water BMPs will be constructed and operated, including any area(s) where storm water flows to and from BMPs.

The project area will vary with the size and structure of the construction activity, the nature and quantity of the storm water discharges, the measures (including BMPs) to control storm water runoff, and the type of receiving waters.

Addendum A also contains information on where to find information on listed and proposed species organized by State and county to assist applicants in determining if further inquiry is necessary as to whether listed species are present in the project area. Applicants can check the Office of Wastewater Management's website (http://www.epa.gov/owm). CGP applicants can also get updated species information for their county by calling the appropriate FWS or NMFS office. EPA Region 6 applicants can also contact the EPA Region 6 Storm Water Hotline (1–800–245–6510) for updated species information.

The CGP also requires that applicants comply with any conditions imposed under the eligibility requirements of Part I.B.3.e.(2)a., b., c., or d. above to remain eligible for coverage under this

permit. Such conditions must be incorporated in the applicant's SWPPP. The CGP does not authorize any prohibited take (as defined under section 3 of the ESA and 50 CFR 17.3) of endangered or threatened species unless such takes are authorized under sections 7 or 10 of the ESA. The CGP does not authorize any storm water discharges or storm water discharge-related activities that are likely to jeopardize the continued existence of any species that are listed or proposed to be listed as endangered or threatened under the ESA or result in the adverse modification or destruction of habitat that is designated or proposed to be designated as critical under the ESA.

It is EPA's intention to provide permit applicants with the greatest possible flexibility in meeting permit requirements for protecting listed species and critical habitat. Thus, EPA is allowing applicants to use either section 7 or section 10 ESA mechanisms to address situations where adverse effects are likely (*See* Part I.B.3.e.(2)(b) and (c)). Also, to give applicants additional flexibility in meeting the Part I.B.3.e. eligibility requirements and with the timing of informal consultations, the permit automatically designates CGP applicants as non-Federal representatives for the purpose of carrying out informal consultation. However, EPA notes that meeting ESA requirements raises difficult implementation issues on how to best ensure that the permits are protective of listed species and critical habitats without unduly burdening permit applicants, permittees, and State, local, and Federal governmental entities. Thus, EPA intends in the future to review those permit conditions and procedures that relate to the ESA and the protection of historic resources to see how well that goal has been achieved and may revise the permits if necessary to better achieve that goal.

V. Historic Property Protection

A. Background

The National Historic Preservation Act of 1966, as amended, (NHPA) establishes a national historic preservation program for the identification and protection of historic properties and resources. Under the NHPA, identification of historic properties is coordinated by the State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs) or other Tribal Representatives (in the absence of a THPO). Section 106 of the NHPA requires Federal agencies to take into account the effects of their actions on historic properties that are listed or eligible for listing on the National Register of Historic Places and to seek comments from the Advisory Council on Historic Preservation (ACHP). The permit was proposed with a number of conditions pertaining to the consideration of historic properties. EPA has decided to not include those conditions because the ACHP and the National Conference of State Historic Preservation Officers (NCSHPO) have requested that EPA not include such conditions in the final permit at this time. The ACHP and the NCSHPO have recommended that EPA issue the permit but recommend that EPA continue working with them and Tribes regarding the possible development of a more comprehensive and efficient approach to ensure that effects to historic properties are given appropriate consideration while ensuring undue burdens are not imposed on applicants and regulatory authorities. EPA plans to continue working with the ACHP, NCSHPO and Tribes on this effort and may modify the permit to incorporate procedures regarding the protection of historic resources at a later date.

B. Future CGP Conditions To Protect or Consider Effects to Historic Properties

In response to comments received on the permit proposal and because the Agency is still discussing historic preservation with the Advisory Council on Historic Preservation (ACHP), the final permit reserves permit requirements related to historic preservation. Today's final permit does not include the eligibility restrictions and evaluation requirements from the proposed permit. After future discussions with the ACHP, EPA may modify the permit to reflect those discussions.

VI. Regulatory Review (Executive Order 12866)

Under Executive Order 12866, (58 FR 51735 [October 4, 1993]) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this re-issued general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866.

VII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMRA § 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA § 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA § 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes an explanation with the final rule why the alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under UMRA § 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating and advising small governments on compliance with the regulatory requirements.

A. UMRA Section 202 and the Construction General Permit

UMRA § 202 requires a written statement containing certain assessments, estimates and analyses prior to the promulgation of certain general notices of proposed rulemaking (2 U.S.C. 1532). UMRA § 421(10) defines

''rule'' based on the definition of rule in the Regulatory Flexibility Act. Section 601 of the Regulatory Flexibility Act defines ''rule'' to mean any rule for which an agency publishes a general notice of proposed rulemaking pursuant to § 553 of the Administrative Procedure Act. EPA does not propose to issue NPDES general permits based on APA § 553. Instead, EPA relies on publication of general permits in the **Federal Register** in order to provide ''an opportunity for a hearing'' under CWA § 402(a), 33 U.S.C. 1342(a). Nonetheless, EPA has evaluated permitting alternatives for regulation of storm water discharges associated with construction activity. The general permit that EPA proposes to re-issue would be virtually the same NPDES general permit for construction that many construction operators have used over the past five years. Furthermore, general permits provide a more cost and time efficient alternative for the regulated community to obtain NPDES permit coverage than that provided through individually drafted permits.

B. UMRA Section 203 and the Construction General Permit

Agencies are required to prepare small government agency plans under UMRA § 203 prior to establishing any regulatory requirement that might significantly or uniquely affect small governments. ''Regulatory requirements'' might, for example, include the requirements of these NPDES general permits for discharges associated with construction activity, especially if a municipality sought coverage under one of the general permits. EPA envisions that some municipalities—those with municipal separate storm sewer systems serving a population over 100,000—may elect to seek coverage under these proposed general permits. For many municipalities, however, a permit application is not required until August 7, 2001, for a storm water discharge associated with construction activity where the construction site is owned or operated by a municipality with a population of less than 100,000. (See 40 CFR 122.26(e)(1)(ii) and (g)).

In any event, any such permit requirements would not significantly affect small governments because most State laws already provide for the control of sedimentation and erosion in a similar manner as today's general permit. Permit requirements also would not uniquely affect small governments because compliance with the permit's conditions affects small governments in the same manner as any other entity seeking coverage under the permit. Thus, UMRA § 203 would not apply.

VIII. Paperwork Reduction Act

On June 2, 1997, EPA solicited comments on the proposed revision to the current Information Collection Request (ICR) document for this permit (ICR approved OMB; OMB No. 2040–0086, expiration, August 31, 1998) to accommodate the increased information requirements in the new NOI for the construction general permit (62 FR 29826). A revised NOI form has been approved (EPA Form 3510–9 OMB No. 2040–0188.) This revised form is included in the permit in Addendum C. EPA estimates an increase in the burden associated with filling out the NOI form for the permit due to added requirements under the Endangered Species Act. EPA also anticipates a small increase in the time because of the requirement to submit an NOT upon completion of construction activities.

IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, a Federal agency must prepare an initial regulatory flexibility analysis ''for any proposed rule'' for which the agency ''is required by section 553 of [the Administrative Procedure Act (APA)], or any other law, to publish general notice of proposed rulemaking.'' The RFA exempts from this requirement any rule that the issuing agency certifies ''will not, if promulgated, have a significant economic impact on a substantial number of small entities.''

EPA did not prepare an initial regulatory flexibility analysis (IRFA) for the proposed CGP. (Note that in today's action, EPA is issuing a separate general permit for each jurisdiction where EPA issues permits; i.e., in certain States, Indian Country lands and Federal facilities within certain States. However, for purposes of readability, reference is made to the permits in the singular form such as ''permit'' or ''CGP'' rather than in plural form.) In the notice of the proposed permit, EPA explained its view that issuance of an NPDES general permit is not subject to rulemaking requirements, including the requirement for a general notice of proposed rulemaking, under APA section 553 or any other law, and is thus not subject to the RFA requirement to prepare an IRFA. Nevertheless, in keeping with EPA's policy to consider the impact of its actions on small entities even when it is not legally required to do so, the Agency considered the potential impact of the permit on small entities that would be eligible for coverage under the permit. EPA concluded that the permit, if issued as drafted, would not have a significant impact on a substantial number of small entities. EPA based its conclusion on the fact that the draft permit was largely the same as the previous permit issued in 1992 and, to the extent it differed, provided dischargers with more flexibility than that permit allowed.

Some commenters on the proposed CGP disagreed with EPA's conclusions that NPDES general permits are not subject to rulemaking requirements and that the proposed permit would not have a significant impact on small entities. They asserted that the CGP is subject to rulemaking requirements and thus the RFA, and that the Agency should have prepared an IRFA for the permit.

In light of the comments received, EPA further considered whether NPDES general permits are subject to rulemaking requirements. The Agency reviewed its previous NPDES general permitting actions and related statements in the **Federal Register** or elsewhere. This review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits. EPA also reviewed again the applicable law, including the CWA, relevant CWA case law and the APA, as well as the Attorney General's Manual on the APA (1947). On the basis of its review, EPA has concluded, as set forth in the proposal, that NPDES general permits are permits under the APA and thus not subject to APA rulemaking requirements or the RFA.

The APA defines two broad, mutually exclusive categories of agency action—''rules'' and ''orders.'' Its definition of ''rule'' encompasses ''an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *'' APA section 551(4). Its definition of ''order'' is residual: ''a final disposition * * * of an agency in a matter other than rule making but including *licensing*.'' APA section 551(6) (emphasis added). The APA defines ''license'' to ''include * * * an agency permit * * *'' APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule.

Section 553 of the APA establishes ''rule making'' requirements. The APA defines *rule making* as ''the agency process for formulating, amending, or repealing a rule.'' APA § 551(5). By its terms, then, § 553 applies only to ''rules'' and not also to ''orders,'' which

include permits. As the Attorney General's Manual on the APA explains, ''the entire Act is based upon a dichotomy between rule making and adjudication [the agency process for formulation of an order]'' (p. 14).

The CWA specifies the use of permits for authorizing the discharge of pollutants to waters of the United States. Section 301(a) of the CWA prohibits discharges of pollutants ''[except as in compliance with'' specified sections of the CWA, including section 402. 33 U.S.C. 1311(a). Section 402 of the CWA authorizes EPA ''to issue a permit for the discharge of any pollutant * * *, notwithstanding section [301(a) of the CWA].'' 33 U.S.C. 1342(a). Thus, the only circumstances in which a discharge of pollution may be authorized is where the Agency has issued a permit for the discharge. Courts, recognizing that a permit is the necessary condition-precedent to any lawful discharge, specifically suggested the use of area-wide and general permits as a mechanism for addressing the Agency's need to issue a substantial number of permits. See *NRDC* v. *Train,* 396 F.Supp. 1393, 1402 (D.D.C. 1975); *NRDC* v. *Costle,* 568 F.2d 1369, 1381. (D.C. Cir. 1977). Adopting the courts' suggestion, EPA has made increasing use of general permits in its CWA regulatory program, particularly for storm water discharges.

In the Agency's view, the fact that an NPDES general permit may apply to a large number of different dischargers does not convert it from a permit into a rule. As noted above, the courts which have faced the issue of how EPA can permit large numbers of discharges under the CWA have suggested use of a general *permit,* not a rule. Under the APA, the two terms are mutually exclusive. Moreover, an NPDES general permit retains unique characteristics that distinguish a permit from a rule. First, today's NPDES general permit for storm water discharges associated with construction activity is effective only with respect to those dischargers that *choose* to be bound by the permit. Thus, unlike the typical rule, this NPDES general permit does not impose immediately effective obligations of general applicability. A discharger must choose to be covered by this general permit and so notify EPA. A discharger always retains the option of obtaining its own individual permit. Relatedly, the terms of the NPDES general permit are enforceable only against dischargers that choose to make use of the permit. If a source discharges without authorization of a general or an individual permit, the discharger violates § 301 of the Act for discharging without a permit, not for violating the terms of an NPDES general permit.

Because the CWA and its case law make clear that NPDES permits are the congressionally chosen vehicle for authorizing discharges of pollutants to waters of the United States, the APA's rulemaking requirements are inapplicable to issuance of such permits, including today's general permit. Further, while the CWA requires that NPDES permits be issued only after an opportunity for a hearing, it does not require publication of a general notice of proposed rulemaking. Thus, NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law. Accordingly, it is not subject to the RFA.

At the same time, the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit. Indeed, the point of issuing a general permit is to provide a speedier means of permitting large number of sources and save dischargers and EPA time and effort. Since the Agency hopes that many dischargers will make use of a general permit and since the CWA requires EPA to provide an opportunity for ''a hearing'' prior to issuance of a permit, EPA provides the public with notice of a draft general permit and an opportunity to comment on it. From public comments, EPA learns how to better craft a general permit to make it appropriate for, and acceptable to, the largest number of potential permittees. This same process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities. This process, however, is voluntary, and does not trigger rulemaking or RFA requirements.

In the case of the CGP being issued today, the Agency has considered and addressed the potential impact of the general permit on small entities in a manner that would meet the requirements of the RFA if it applied. Specifically, EPA has analyzed the potential impact of the general permit on small entities and found that it will not have a significant economic impact on a substantial number of small entities. Like the previous general permit that it replaces (the Baseline Construction General Permit), the permit will make available to many small entities, particularly operators of construction sites, a streamlined process for obtaining authorization to discharge. Of the possible permitting mechanisms available to dischargers subject to the CWA, NPDES general permits are designed to reduce the reporting and monitoring burden associated with NPDES permit authorization, especially for small entities with discharges having comparatively less potential for environmental degradation than discharges typically regulated under individual NPDES permits. Thus, general permits like the permit at issue here provide small entities with a permitting application option that is much less burdensome than NPDES individual permit applications.

Furthermore, the general permit is virtually identical to its predecessor, the Baseline Construction General Permit, under which many construction operators have operated during the past five years. Moreover, the other new provisions of the permit have been designed to minimize burdens on small entities, including eliminating the requirement that construction site operators require that their contractors and subcontractors sign a standard certification statement agreeing to abide by storm water pollution prevention plan provisions developed for a project. In today's general permit, only the operator(s) of a construction site are required to satisfy certification requirements under the permit. EPA believes this modification from the prior permit should reduce any such adverse economic impacts on both operators and contractors/subcontractors who, in many instances, are small entities. In view of the foregoing, the Regional Administrators find that the final general permit, even if it were a rule, will not have a significant economic impact on a substantial number of small entities.

Storm Water General Permit for Construction Activities in Region 6

NPDES Permit No. [See Part I.A.]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.), except as provided in Part I.B.3 of this permit, operators of construction activities located in an area specified in Part I.A. and who submit a Notice of Intent in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit shall become effective on [insert the date of publication of the final permit in the **Federal Register**].

This permit and the authorization to discharge shall expire at midnight, July 7, 2003.

Signed: June 24, 1998.

William B. Hathaway,

Director, Water Quality Protection Division.

NPDES General Permits for Storm Water Discharges from Construction Activities

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Part I. Coverage Under This Permit

A. Permit Area

The permit language is structured as if it were a single permit, with State, Indian Country land, or other area-specific conditions specified in Part X. Permit coverage is actually provided by legally separate and distinctly numbered permits covering each of the following areas:

Region 6

LAR10*##I: Indian Country lands in the State of Louisiana
NMR10*###: The State of New Mexico, except Indian Country lands
NMR10*##I: Indian Country lands in the State of New Mexico, except Navajo Reservation Lands and Ute Mountain Reservation Lands
OKR10*##I: Indian Country lands in the State of Oklahoma
OKR10*##F: Oil and Gas Sites in State of Oklahoma
TXR10*###: The State of Texas, except Indian Country lands
TXR10*##I: Indian Country lands in the State of Texas

B. Eligibility

1. Permittees are authorized to discharge pollutants in storm water runoff associated with construction activities as defined in 40 CFR 122.26(b)(14)(x) and those construction site discharges designated by the Director as needing a storm water permit under 122.26(a)(1)(v) or under 122.26(a)(9) and 122.26(g)(1)(i). Discharges identified under Part I.B.3 are excluded from coverage. Any discharge authorized by a different NPDES permit may be commingled with discharges authorized by this permit.

2. This permit also authorizes storm water discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:

a. The support activity is directly related to a construction site that is required to have NPDES permit coverage for discharges of storm water associated with construction activity;

b. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and

c. Appropriate controls and measures are identified in a storm water pollution prevention plan covering the discharges from the support activity areas.

3. Limitations on Coverage

a. *Post Construction Discharges.* This permit does not authorize storm water discharges that originate from the site *after* construction activities have been completed and the site, including any temporary support activity site, has undergone final stabilization. Industrial post-construction storm water discharges may need to be covered by a separate NPDES permit.

b. *Discharges Mixed with Non-Storm Water.* This permit does not authorize discharges that are mixed with sources of non-storm water, other than those discharges which are identified in Part III.A.2. or 3. (exceptions to prohibition on non-storm water discharges) and are in compliance with Part IV.D.5 (non-storm water discharges).

c. *Discharges Covered by Another Permit.* This permit does not authorize storm water discharges associated with construction activity that have been covered under an individual permit or required to obtain coverage under an alternative general permit in accordance with Part VI.L.

d. *Discharges Threatening Water Quality.* This permit does not authorize storm water discharges from construction sites that the Director (EPA) determines will cause, or have reasonable potential to cause or contribute to, violations of water quality standards. Where such determinations have been made, the Director may notify the operator(s) that an individual permit application is necessary in accordance with Part VI.L. However, the Director may authorize coverage under this permit after appropriate controls and implementation procedures designed to bring the discharges into compliance with water quality standards have been included in the storm water pollution prevention plan;

e. *Storm water discharges and storm water discharge-related activities that are not protective of Federally listed endangered and threatened (''listed'') species or designated critical habitat (''critical habitat'').*

(1) For the purposes of complying with the Part I.B.3.e. eligibility requirements, ''storm water discharge-related activities'' include:

(a) Activities which cause, contribute to, or result in point source storm water pollutant discharges, including but not limited to: excavation, site development, grading and other surface disturbance activities; and

(b) Measures to control storm water including the siting, construction and operation of best management practices

(BMPs) to control, reduce or prevent storm water pollution.

(2) Coverage under this permit is available only if the applicant certifies that it meets at least one of the criteria in paragraphs (a)–(d) below. Failure to continue to meet one of these criteria during the term of the permit will render a permittee ineligible for coverage under this permit.

(a) The storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat; or

(b) Formal or informal consultation with the Fish and Wildlife Service and/or the National Marine Fisheries Service (the ''Services'') under section 7 of the Endangered Species Act (ESA) has been concluded which addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat and the consultation results in either a no jeopardy opinion or a written concurrence by the Service(s) on a finding that the applicant's storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat. A section 7 consultation may occur in the context of another Federal action (e.g., a ESA section 7 consultation was performed for issuance of a wetlands dredge and fill permit for the project, or as part of a National Environmental Policy Act (NEPA) review); or

(c) The applicant's construction activities are authorized under section 10 of the ESA and that authorization addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat; or

(d) The applicant's storm water discharges and storm water discharge-related activities were already addressed in another operator's certification of eligibility under Part I.B.3.e.(2)(a), (b), or (c) which included the applicant's project area. By certifying eligibility under Part I.B.3.e.(2)(d), the applicant agrees to comply with any measures or controls upon which the other operator's certification under Part I.B.3.e.(2)(a), (b) or (c) was based.

(3) For all projects commencing construction after the effective date of this permit, applicants must follow the procedures provided at Addendum A of this permit when applying for permit coverage. The Director may also require any existing permittee or applicant to provide documentation of eligibility for this permit using the procedures in Addendum A, where EPA or the Fish and Wildlife Services determine that there is a potential impaction on endangered or threatened species or a critical habitat. Nothing in this permit relieves applicants which are under construction as of the effective date of this permit of their obligations they may have to comply with any requirements of the Endangered Species Act.

(4) The applicant must comply with any applicable terms, conditions or other requirements developed in the process of meeting eligibility requirements of Part I.B.3.e.(2)(a), (b), (c), or (d) above to remain eligible for coverage under this permit. Such terms and conditions must be incorporated in the applicant's storm water pollution prevention plan.

(5) Applicants who choose to conduct informal consultation to meet the eligibility requirements of Part I.B.3.e.(2)(b) are automatically designated as non-Federal representatives under this permit. See 50 CFR 402.08. Applicants who choose to conduct informal consultation as a non-Federal representatives must notify EPA and the appropriate Service office in writing of that decision.

(6) This permit does not authorize any storm water discharges where the discharges or storm water discharge-related activities cause prohibited ''take'' (as defined under section 3 of the Endangered Species Act and 50 CFR 17.3) of endangered or threatened species unless such takes are authorized under sections 7 or 10 of the Endangered Species Act.

(7) This permit does not authorize any storm water discharges where the discharges or storm water discharge-related activities are likely to jeopardize the continued existence of any species that are listed or proposed to be listed as endangered or threatened under the ESA or result in the adverse modification or destruction of habitat that is designated or proposed to be designated as critical under the ESA.

f. *Storm water Discharges and Storm Water Discharge-Related Activities with Unconsidered Adverse Effects on Historic Properties.* (Reserved)

C. Obtaining Authorization

1. In order for storm water discharges from construction activities to be authorized under this general permit, an operator must:

a. Meet the Part I.B eligibility requirements;

b. Except as provided in Parts II.A.5 and II.A.6, develop a storm water pollution prevention plan (SWPPP) covering either the entire site or all portions of the site for which they are operators (see definition in Part IX.N) according to the requirements in Part IV. A ''joint'' SWPPP may be developed and implemented as a cooperative effort where there is more than one operator at a site; and

c. Submit a Notice of Intent (NOI) in accordance with the requirements of Part II, using an NOI form provided in Addendum C of this permit. Only one NOI need be submitted to cover all of the permittee's activities on the common plan of development or sale (e.g., you do not need to submit a separate NOI for each separate lot in a residential subdivision or for two separate buildings being constructed at a manufacturing facility, provided your SWPPP covers each area for which you are an operator). The SWPPP must be implemented upon commencement of construction activities.

2. Any new operator on site, including those who replace an operator who has previously obtained permit coverage, must submit an NOI to obtain permit coverage.

3. Unless notified by the Director to the contrary, operators who submit a correctly completed NOI in accordance with the requirements of this permit are authorized to discharge storm water from construction activities under the terms and conditions of this permit two (2) days after the date that the NOI is postmarked. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information (see Part VI.L).

D. Terminating Coverage

1. Permittees wishing to terminate coverage under this permit must submit a Notice of Termination (NOT) in accordance with Part VIII of this permit. Compliance with this permit is required until an NOT is submitted. The permittee's authorization to discharge under this permit terminates at midnight of the day the NOT is signed.

2. All permittees must submit a NOT within thirty (30) days after one or more of the following conditions have been met:

a. Final stabilization (see definition Part IX.I) has been achieved on all portions of the site for which the permittee is responsible (including if applicable, returning agricultural land to its pre-construction agricultural use);

b. Another operator/permittee has assumed control according to Part VI.G.2.c. over all areas of the site that have not been finally stabilized; or

c. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

Enforcement actions may be taken if a permittee submits a NOT without

meeting one or more of these conditions.

Part II. Notice of Intent Requirements

A. Deadlines for Notification

1. Except as provided in Parts II.A.3, II.A.4, II.A.5 or II.A.6 below, parties defined as operators (see definition in Part IX.N) due to their operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications, must submit a Notice of Intent (NOI) in accordance with the requirements of this Part at least two (2) days prior to the commencement of construction activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities).

2. Except as provided in Parts II.A.3, II.A.4, II.A.5 or II.A.6 below, parties defined as operators (see definition in Part IX.N) due to their day-to-day operational control over activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan or other permit conditions (e.g., general contractor, erosion control contractor) must submit a NOI at least two (2) days prior to commencing work on-site.

3. For storm water discharges from construction projects where the operator changes, including instances where an operator is added after a NOI has been submitted under Parts II.A.1 or II.A.2, the new operator must submit a NOI at least two (2) days before assuming operational control over site specifications or commencing work on-site.

4. Operators are not prohibited from submitting late NOIs. When a late NOI is submitted, authorization is only for discharges that occur after permit coverage is granted. The Agency reserves the right to take appropriate enforcement actions for any unpermitted activities that may have occurred between the time construction commenced and authorization of future discharges is granted (typically 2 days after a complete NOI is submitted).

5. Operators of on-going construction projects as of the effective date of this permit which received authorization to discharge for these projects under the 1992 baseline construction general permit must:

a. Submit a NOI according to Part II.B. within 90 days of the effective date of this permit. If the permittee is eligible to submit a Notice of Termination (e.g., construction is finished and final stabilization has been achieved) before the 90th day, a new NOI is not required to be submitted;

b. For the first 90 days from the effective date of this permit, comply with the terms and conditions of the 1992 baseline construction general permit they were previously authorized under; and

c. Update their storm water pollution prevention plan to comply with the requirements of Part IV within 90 days after the effective date of this permit.

6. Operators of on-going construction projects as of the effective date of this permit which did *not* receive authorization to discharge for these projects under the 1992 baseline construction general permit must:

a. Prepare and comply with an interim storm water pollution prevention plan in accordance with the 1992 baseline construction general permit prior to submitting an NOI;

b. Submit a NOI according to Part II.B; and

c. Update their storm water pollution prevention plan to comply with the requirements of Part IV within 90 days after the effective date of this permit.

B. Contents of Notice of Intent (NOI)

1. Use of Revised NOI Form

The revised NOI form [EPA Form 3510–9] shall be signed in accordance with Part VI.G of this permit and shall include the following information:

a. The name, address, and telephone number of the operator filing the NOI for permit coverage;

b. An indication of whether the operator is a Federal, State, Tribal, private, or other public entity;

c. The name (or other identifier), address, county, and latitude/longitude of the construction project or site;

d. An indication of whether the project or site is located on Indian Country lands;

e. Confirmation that a storm water pollution prevention plan (SWPPP) has been developed or will be developed prior to commencing construction activities, and that the SWPPP will be compliant with any applicable local sediment and erosion control plans. Copies of SWPPPs or permits should *not* be included with the NOI submission;

f. Optional information: the location where the SWPPP may be viewed and the name and telephone number of a contact person for scheduling viewing times;

g. The name of the receiving water(s);

h. Estimates of project start and completion dates, and estimates of the number of acres of the site on which soil will be disturbed (if less than 1 acre, enter ''1'');

i. Based on the instructions in Addendum A, whether any listed or proposed threatened or endangered species, or designated critical habitat, are in proximity to the storm water discharges or storm water discharge-related activities to be covered by this permit;

j. Under which section(s) of Part I.B.3.e. (Endangered Species) the applicant is certifying eligibility; and

Note that as of the effective date of this permit, reporting of information relating to the preservation of historic properties has been reserved and is not required at this time. Such reservation in no way relieves applicants or permittees from any otherwise applicable obligations or liabilities related to historic preservation under State, Tribal or local law. After further discussions between EPA and the Advisory Council on Historic Preservation, the Agency may modify the permit. Any such modification may affect future Notice of Intent reporting requirements.

C. Where To Submit

1. NOIs must be signed in accordance with Part VI.G. and sent to the following address: Storm Water Notice of Intent (4203), US EPA, 401 M Street, SW, Washington, DC 20460.

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

A. Prohibition on Non-Storm Water Discharges

1. Except as provided in Parts I.B.2 or 3 and III.A.2 or 3, all discharges covered by this permit shall be composed entirely of storm water associated with construction activity.

2. Discharges of material other than storm water that are in compliance with an NPDES permit (other than this permit) issued for that discharge may be discharged or mixed with discharges authorized by this permit.

3. The following non-storm water discharges from active construction sites are authorized by this permit provided the non-storm water component of the discharge is in compliance with Part IV.D.5 (non-storm water discharges): discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles where detergents are not used; water used to control dust in accordance with Part IV.D.2.c.(2); potable water sources including waterline flushings; routine external building wash down which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air

Appendix C4

Penalties for Violations of Permit Conditions for Construction Activities
(Federal Register Volume 63, No. 128, July 6, 1998, Notices, pp. 36505-36506)

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water controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable.

4. Inspections

Qualified personnel (provided by the permittee or cooperatively by multiple permittees) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen (14) calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

Where sites have been finally or temporarily stabilized, runoff is unlikely due to winter conditions (e.g., site is covered with snow, ice, or frozen ground exists), or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches) such inspections shall be conducted at least once every month.

Permittees are eligible for a waiver of monthly inspection requirements until one month before thawing conditions are expected to result in a discharge if all of the following requirements are met: (1) the project is located in an area where frozen conditions are anticipated to continue for extended periods of time (i.e., more than one month); (2) land disturbance activities have been suspended; and (3) the beginning and ending dates of the waiver period are documented in the SWPPP.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Sediment and erosion control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations shall be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. Based on the results of the inspection, the SWPPP shall be modified as necessary (e.g., show additional controls on map required by Part IV.D.1; revise description of controls required by Part IV.D.2) to include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP shall be completed within 7 calendar days following the inspection. If existing BMPs need to be modified or if additional BMPs are necessary, implementation shall be completed before the next anticipated storm event. If implementation before the next anticipated storm event is impracticable, they shall be implemented as soon as practicable.

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, and major observations relating to the implementation of the SWPPP shall be made and retained as part of the SWPPP for at least three years from the date that the site is finally stabilized. Major observations should include: the location(s) of discharges of sediment or other pollutants from the site; location(s) of BMPs that need to be maintained; location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location; and location(s) where additional BMPs are needed that did not exist at the time of inspection. Actions taken in accordance with Part IV.D.4.b of this permit shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. Such reports shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VI.G of this permit.

5. Non-Storm Water Discharges

Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 or 3 of this permit that are combined with storm water discharges associated with construction activity must be identified in the SWPPP. The SWPPP shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

Part V. Retention of Records

A. Documents

The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request of the Director at any time.

B. Accessibility

The permittee shall retain a copy of the storm water pollution prevention plan required by this permit (including a copy of the permit language) at the construction site (or other local location accessible to the Director, a State, Tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; or the operator of a municipal separate storm sewer receiving discharges from the site) from the date of project initiation to the date of final stabilization. Permittees with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on-site for the use of all operators and those identified as having responsibilities under the SWPPP whenever they are on the construction site.

C. Addresses

Except for the submittal of NOIs and NOTs (see Parts II.C and VIII.B, respectively), all written correspondence concerning discharges in any State, Indian Country land or from any Federal facility covered under this permit and directed to the EPA, including the submittal of individual permit applications, shall be sent to the address listed below: United States EPA, Region 6, Storm Water Staff, Enforcement and Compliance Assurance Division (GEN-WC), EPA SW Construction GP, P.O. Box 50625, Dallas, TX 75205.

Part VI. Standard Permit Conditions

A. Duty To Comply

1. The Permittee Must Comply With All Conditions of This Permit

Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions

The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (**Federal Register**: December 31, 1996, Volume 61, Number 252, pages 69359–69366, as corrected, March 20, 1997, Volume 62, Number 54, pages 13514–

13517) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every four years thereafter and to adjust them as necessary for inflation according to a specified formula. The civil and administrative penalties listed below were adjusted for inflation starting in 1996.

a. *Criminal.*

(1) Negligent Violations. The CWA provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2) Knowing Violations. The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) Knowing Endangerment. The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(4) False Statement. The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See section 309.c.4 of the Clean Water Act).

b. *Civil Penalties.* The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $27,500 per day for each violation.

c. *Administrative Penalties.* The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

(1) *Class I Penalty.* Not to exceed $11,000 per violation nor shall the maximum amount exceed $27,500.

(2) *Class II Penalty.* Not to exceed $11,000 per day for each day during which the violation continues, nor shall the maximum amount exceed $137,500.

B. Continuation of the Expired General Permit

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and effect. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the *earlier* of:

1. Reissuance or replacement of this permit, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or

2. The permittee's submittal of a Notice of Termination; or

3. Issuance of an individual permit for the permittee's discharges; or

4. A formal permit decision by the Director not to reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

C. Need To Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Duty To Provide Information

The permittee shall furnish to the Director or an authorized representative of the Director any information which is requested to determine compliance with this permit or other information.

F. Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

G. Signatory Requirements

All Notices of Intent, Notices of Termination, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed as follows:

1. All Notices of Intent and Notices of Termination shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

2. All reports required by this permit and other information requested by the Director or authorized representative of the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an

Appendix C5

**Threatened and Endangered Species, Historic Places,
and Total Maximum Daily Load Issues for Industrial Activities**
(Federal Register Volume 65, No. 210, October 30, 2000, Notices, pp. 64753-64757)

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system for the collection of statistical economic data. However, the use of the new system for nonstatistical purposes is optional. EPA considered the use of NAICS for the today's MSGP reissuance, but elected to retain the 1987 SIC code system since the storm water regulations (40 CFR 122.26(b)(14)) reference the previous system and this system has generally proven to be adequate for identifying the facilities covered by storm water regulations. EPA will consider transitioning to the new NAICS system in future rule making.

V. Limitations on Coverage

A. Storm Water Discharges Subject to Effluent Guideline Limitations, Including New Source Performance Standards

The general prohibition on coverage of storm water subject to an effluent guideline limitation in the 1995 MSGP has been retained in today's MSGP reissuance. Only those storm water discharges subject to the following effluent guidelines are eligible for coverage (provided they meet all other eligibility requirements):

TABLE 2.—EFFLUENT GUIDELINES APPLICABLE TO DISCHARGES THAT MAY BE ELIGIBLE FOR PERMIT COVERAGE

Effluent guideline	New Source performance standards included in effluent guidelines?	Sectors with affected facilities
Runoff from material storage piles at cement manufacturing facilities [40 CFR Part 411 Subpart C (established February 23, 1977)].	Yes	E
Contaminated runoff from phosphate fertilizer manufacturing facilities [40 CFR Part 418 Subpart A (established April 8, 1974)].	Yes	C
Coal pile runoff at steam electric generating facilities [40 CFR Part 423 (established November 19, 1982)]	Yes	O
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas [40 CFR Part 429, Subpart I (established January 26, 1981)].	Yes	A
Mine dewatering discharges at crushed stone mines [40 CFR part 436, Subpart B]	No	J
Mine dewatering discharges at construction sand and gravel mines [40 CFR part 436, Subpart C]	No	J
Mine dewatering discharges at industrial sand mines [40 CFR part 436, Subpart D]	No	J
Runoff from asphalt emulsion facilities [40 CFR Part 443 Subpart A (established July 24, 1975)].	Yes	D
Runoff from landfills, [40 CFR Part 445, Subpart A and B (established February 2, 2000.]	Yes	K & L

Section 306 of the Clean Water Act (CWA) requires EPA to develop performance standards for all new sources described in that section. These standards apply to all facilities which go into operation after the date the standards are promulgated. Section 511(c) of the CWA requires the Agency to comply with the National Environmental Policy Act (NEPA) prior to issuance of a permit under the authority of Section 402 of the CWA to facilities defined as a new source under Section 306.

The fact sheet for the 1995 MSGP described a process for ensuring compliance with NEPA for the MSGP (60 FR 50809). This process, which is repeated below, has been retained for the reissued MSGP. Additional guidance is found in a new Addendum C to the final MSGP.

Facilities which are subject to the performance standards for new sources as described in this section of the fact sheet must provide EPA with an Environmental Information Document pursuant to 40 CFR 6.101 prior to seeking coverage under this permit. This information shall be used by the Agency to evaluate the facility under the requirements of NEPA in an Environmental Review. The Agency will make a final decision regarding the direct or indirect impact of the discharge. The Agency will follow all administrative procedures required in this process. The permittee must obtain a copy of the Agency's final finding prior to the submission of a Notice of Intent to be covered by this general permit. In order to maintain eligibility, the permittee must implement any mitigation required of the facility as a result of the NEPA review process. Failure to implement mitigation measures upon which the Agency's NEPA finding is based is grounds for termination of permit coverage. In this way, EPA has established a procedure which allows for the appropriate review procedures to be completed by this Agency prior to the issuance of a permit under Section 402 of the CWA to an operator of a facility subject to the new source performance standards of Section 306 of the CWA. EPA believes that it has fulfilled its requirements under NEPA for this Federal action under Section 402 of the CWA.

B. Historic Preservation

The National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of Federal undertakings, including undertakings on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. The term ''Federal undertaking'' is defined in the existing NHPA regulations to include any project, activity, or program under the direct or indirect jurisdiction of a Federal agency that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects for that project, activity, or program. See 36 CFR 802(o). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. See 36 CFR 802(e).

Federal undertakings include EPA's issuance of general NPDES permits. In light of NHPA requirements, EPA included a provision in the eligibility requirements of the 1995 MSGP for the consideration of the effects to historic properties. That provision provided that an applicant is eligible for permit coverage only if: (1) the applicant's storm water discharges and BMPs to control storm water runoff do not affect a historic property, or (2) the applicant has obtained, and is in compliance with, a written agreement between the applicant and the State Historic Preservation Officer (SHPO) that outlines all measures to be taken by the applicant to mitigate or prevent adverse effects to the historic property. See Part I.B.6, 60 FR 51112 (September 29, 1995). When applying for permit coverage, applicants were required to certify in

the NOI that they are in compliance with the Part I.B.6 eligibility requirements. Provided there are no other factors limiting permit eligibility, MSGP coverage was then granted 48 hours after the postmark on the envelope used to mail the NOI.

The September 30, 1998 modification included two revisions of the original MSGP with respect to historic properties. First, EPA amended the original Part I.B.6.(ii) to include a reference to Tribal Historic Preservation Officers (THPOs) because MSGP coverage extends to Tribal lands and in recognition of the central role Tribal governments play in the protection of historic resources. Second, EPA included NHPA guidance and a list of SHPO and THPO addresses in a new Addendum I to the MSGP to assist applicants with the certification process for permit eligibility under this condition.

For today's MSGP reissuance, EPA has modified slightly the requirements of the first option for obtaining permit coverage to enhance the protection of historic properties. Permit coverage is only available if storm water and allowable non-storm water discharges and ''discharge-related activities'' do not affect historic properties. ''Discharge-related activities'' are defined to include activities which cause, contribute to, or result in storm water and allowable non-storm water point source discharges, and measures such as the siting, construction and operation of BMPs to control, reduce or prevent pollution in the discharges. Discharge-related activities are included to ensure compliance with NHPA requirements to consider the effects of activities which are related to the activity which is permitted, *i.e.*, the storm water and non-storm water discharges. Because this change was minor, EPA is relying on its 1995 and 1998 consultations with the Advisory Council on Historic Preservation as its basis for reissuance of this permit.

Also, as discussed in Section VI.A.1 below, EPA intends to modify, contingent upon Office of Management and Budget review and approval, the Notice of Intent form to require that operators identify which of the above two options they are using to ensure eligibility for permit coverage under the MSGP. The NHPA guidance has also been modified to reflect the above pending changes, and appears in Addendum B in today's notice rather than Addendum I. Until the revised form is approved and issued, the current form (with minor clarifications) remains in effect.

Facilities seeking coverage under today's MSGP which cannot certify compliance with the NHPA requirements must submit individual permit applications to the permitting authority. For facilities already covered by the existing MSGP, the deadline for the individual applications is the same as that for NOIs requesting coverage under the reissued MSGP (December 29, 2000).

C. Endangered Species

The Endangered Species Act (ESA) of 1973 requires Federal Agencies such as EPA to ensure, in consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (also known collectively as the ''Services''), that any actions authorized, funded, or carried out by the Agency (*e.g.*, EPA issued NPDES permits authorizing discharges to waters of the United States) are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or adversely modify or destroy critical habitat of such species (see 16 U.S.C. 1536(a)(2), 50 CFR 402 and 40 CFR 122.49(c)).

For the 1995 MSGP, EPA conducted formal consultation with the Services which resulted in a joint Service biological opinion issued by the FWS on March 31, 1995, and by the NMFS on April 5, 1995, which concluded that the issuance and operation of the MSGP was not likely to jeopardize the existence of any listed endangered or threatened species, or result in the adverse modification or destruction of any critical habitat.

The 1995 MSGP contained a number of conditions to protect listed species and critical habitat. Permit coverage was provided only where:

- The storm water discharge(s), and the construction of BMPs to control storm water runoff, were not likely to jeopardize species identified in Addendum H of the permit; or
- The applicant's activity had received previous authorization under the Endangered Species Act and established an environmental baseline that was unchanged; or,
- The applicant was implementing appropriate measures as required by the Director to address jeopardy.

For today's MSGP reissuance, EPA has modified the ESA-related requirements for obtaining permit coverage to enhance the protection of listed species. First, permit coverage is only available if storm water and allowable non-storm water discharges and ''discharge-related activities'' result in no jeopardy to listed species. ''Discharge-related activities'' are defined to include activities which cause, contribute to or result in storm water and allowable non-storm water point source discharges, and measures such as the siting, construction and operation of BMPs to control, reduce or prevent pollution in the discharges. Discharge-related activities are included for compliance with ESA requirements to consider the effects of activities which are related to the activity which is permitted, *i.e.*, the storm water and non-storm water discharges.

In addition, operators seeking coverage under the reissued MSGP must certify that they are eligible for coverage under one of the following five options which are provided in Parts 1.2.3.6.3.1 through 5 of the permit:

1. No endangered or threatened species or critical habitat are in proximity to the facility or the point where authorized discharges reach the receiving water; or

2. In the course of a separate federal action involving the facility (*e.g.*, EPA processing request for an individual NPDES permit, issuance of a CWA Section 404 wetlands dredge and fill permit, etc.), formal or informal consultation with the Fish and Wildlife Service and/or the National Marine Fisheries Service under Section 7 of the ESA has been concluded and that consultation:

(a) addressed the effects of the storm water and allowable non-storm water discharges and discharge-related activities on listed species and critical habitat and

(b) the consultation resulted in either a no jeopardy opinion or a written concurrence by the Service(s) on a finding that the storm water and allowable non-storm water discharges and discharge-related activities are not likely to jeopardize listed species or critical habitat; or

3. The activities are authorized under Section 10 of the ESA and that authorization addresses the effects of the storm water and allowable non-storm water discharges and discharge-related activities on listed species and critical habitat; or

4. Using due diligence, the operator has evaluated the effects of the storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed endangered or threatened species and critical habitat and does not have reason to believe listed species or critical habitat would be jeopardized; or

5. The storm water and allowable non-storm water discharges and discharge-related activities were already addressed in another operator's

certification of eligibility under Part 1.2.3.6.3.1 through 1.2.3.6.3.4 which included the facility's activities. By certifying eligibility under this Part, a permittee agrees to comply with any measures or controls upon which the other operator's certification was based.

The first four options listed above are similar to the eligibility provisions of the 1995 MSGP. Option 5 was added to account for situations such as an airport facility where one operator (*e.g.*, the airport authority) may have covered the entire airport through its certification. Option 5 allows other operators to take advantage of such a certification without repeating the reviews conducted by the first operator. Option 1 applies to operators who are not jeopardizing endangered species because listed species simply are not in proximity to their facility. Option 4 applies to operators who have endangered species nearby and must look more closely at potential jeopardy and may need to adopt measures to reduce the risk of jeopardy to listed species or critical habitat. The provision of the two options to determine that a facility is unlikely to jeopardize listed species, coupled with the pending new NOI requirement to indicate whether or not the Service was contacted in making the determination, will also allow for better oversight of the permit. Under the 1995 permit, there was no way to tell from the NOI information whether the decision on eligibility was due to no species in the county, a discussion with the Service, or a simple unilateral decision by the operator.

Addendum H of the 1995 MSGP provided instructions to assist permittees in determining whether they met the permit's ESA-related eligibility requirements. For today's reissued MSGP, this guidance has been updated to reflect the above requirements and appears as Addendum A. As noted in Section VI.A.1 below, EPA intends to modify the Notice of Intent form to conform with new ESA requirements discussed above.

Addendum H of the 1995 MSGP contained a list of proposed and listed endangered and threatened species that could be jeopardized by the discharges and measures to control pollutants in the discharges. EPA reinitiated and completed formal consultation with the Services for the September 30, 1998 modification of the MSGP. As a result of this consultation and in response to public comments on the modification, EPA updated the species list in Addendum H to include species that were listed or proposed for listing since the Addendum H list was originally compiled on March 31, 1995. EPA also decided to expand the list to include all of the terrestrial (*i.e.*, non-aquatic) listed and proposed species in recognition that those species may be impacted by permitted activities such as the construction and operation of the BMPs. The September 30, 1998 MSGP modification included the species list updated as of July 8, 1998 (63 FR 52494). The species list is also being updated on a regular basis and an electronic copy of the list is available at the Office of Wastewater Management website at ''http://www.epa.gov/owm/esalst2.htm''. The information may also be obtained by contacting the Services. The permittee is responsible for obtaining the updated information.

Based on comments received on the proposed MSGP on March 30, 2000 (65 FR 17010), the final permit requires facility operators to consider only listed endangered or threatened species, and not species proposed to be listed. Further explanation for the change can be found in Section IX of this notice.

On August 10, 2000, EPA initiated informal consultation with FWS and NMFS on EPA's finding of no likelihood of adverse effect on threatened and endangered species and critical habitat resulting from issuance of MSGP–2000. On September 22, 2000 FWS concurred with EPA's finding.

To be eligible for coverage under today's reissued MSGP, facilities must review the updated list of species and their locations in conjunction with the Addendum A instructions for completing the application requirements under this permit. If an applicant determines that none of the species identified in the updated species list is found in the county in which the facility is located, then there is a likelihood of no jeopardy and they are eligible for permit coverage. Applicants must then certify that their storm water and allowable non-storm water discharges, and their discharge-related activities, are not likely to jeopardize species and will be granted MSGP permit coverage 48 hours after the date of the postmark on the envelope used to mail the NOI form, provided there are no other factors limiting permit eligibility.

If listed species are located in the same county as the facility seeking MSGP coverage, then the applicant must determine whether the species are in proximity to the storm water or allowable non-storm water discharges or discharge-related activities at the facility. A species is in proximity to a storm water or allowable non-storm water discharge when the species is located in the path or down gradient area through which or over which the point source discharge flows from industrial activities to the point of discharge into the receiving water, and once discharged into the receiving water, in the immediate vicinity of, or nearby, the discharge point. A species is also in proximity if it is located in the area of a site where discharge-related activities occur. If an applicant determines there are no species in proximity to the storm water or allowable non-storm water discharges, or discharge-related activities, then there is no likelihood of jeopardizing the species and the applicant is eligible for permit coverage.

If species are in proximity to the storm water or allowable non-storm water discharges or discharge-related activities, as long as they have been considered as part of a previous ESA authorization of the applicant's activity, and the environmental baseline established in that authorization is unchanged, the applicant may be covered under the permit. The environmental baseline generally includes the past and present impacts of all Federal, state and private actions that were occurring at the time the initial NPDES authorization and current ESA section 7 action by EPA or any other federal agency was taken. Therefore, if a permit applicant has received previous authorization and nothing has changed or been added to the environmental baseline established in the previous authorization, then coverage under this permit will be provided.

In the absence of such previous authorization, if species identified in the updated species list are in proximity to the discharges or discharge-related activities, then the applicant must determine whether there is any likely jeopardy to the species. This is done by the applicant conducting a further examination or investigation, or an alternative procedure, as described in the instructions in Addendum A of the permit. If the applicant determines that there is no likely jeopardy to the species, then the applicant is eligible for permit coverage. If the applicant determines that there likely is, or will likely be any jeopardy, then the applicant is not eligible for MSGP coverage unless or until he or she can meet one of the other eligibility conditions.

All dischargers applying for coverage under the MSGP must provide in the application information on the Notice of Intent form: (1) A determination as to whether there are any listed species in proximity to the storm water or allowable non-storm water discharges or discharge related activity, and (2) (when

EPA receives approval from the Office of Management and Budget and issues the revised form) an indication of which option under Part 1.2.3.6.3 of the MSGP they claim eligibility for permit coverage, and (3) a certification that their storm water and allowable non-storm water discharges and discharge-related activities are not likely to jeopardize listed species, or are otherwise eligible for coverage due to a previous authorization under the ESA. Coverage is contingent upon the applicant's providing truthful information concerning certification and abiding by any conditions imposed by the permit.

Dischargers who cannot determine if they meet one of the endangered species eligibility criteria cannot sign the certification to gain coverage under the MSGP and must apply to EPA for an individual NPDES storm water permit. For facilities already covered by the 1995 MSGP, the deadline for the individual applications is the same as that for NOIs requesting coverage under the reissued MSGP (December 29, 2000). As appropriate, EPA will conduct ESA section 7 consultation when issuing such individual permits.

Regardless of the above conditions, EPA may require that a permittee apply for an individual NPDES permit on the basis of possible jeopardy to species or critical habitats. Where there are concerns that coverage for a particular discharger is not sufficiently protective of listed species, the Services (as well as any other interested parties) may petition EPA to require that the discharger obtain an individual NPDES permit and conduct an individual section 7 consultation as appropriate.

In addition, the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his/her authorized representative, or the U.S. Fish and Wildlife Service (as well as any other interested parties) may petition EPA to require that a permittee obtain an individual NPDES permit. The permittee is also required to make the SWPPP, annual site compliance inspection report, or other information available upon request to the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his/her authorized representative, or the U.S. Fish and Wildlife Service Regional Director, or his/her authorized representative.

These mechanisms allow for the broadest and most efficient coverage for the permittee while still providing for the most efficient protection of endangered species. They significantly reduce the number of dischargers that must be considered individually and therefore allow the Agency and the Services to focus their resources on those discharges that are indeed likely to jeopardize listed species. Straightforward mechanisms such as these allow applicants more immediate access to permit coverage, and eliminates ''permit limbo'' for the greatest number of permitted discharges. At the same time it is more protective of endangered species because it allows both agencies to focus on the real problems, and thus, provide endangered species protection in a more expeditious manner.

D. New Storm Water Discharges to Water Quality-Impaired or Water Quality-Limited Receiving Waters

Today's final MSGP includes a new provision (Part 1.2.3.8) which establishes eligibility conditions with regard to discharges to water quality-limited or water quality-impaired waters. For the purposes of this permit, ''water quality-impaired'' refers to a stream, lake, estuary, etc. that is not currently meeting its assigned water quality standards. These waters are also referred to as ''303(d) waters'' due to the requirement under that section of the CWA for States to periodically list all state waters that are not meeting their water quality standards. ''Water quality-limited waters'' refers to waterbodies for which a State had to develop individual Total Maximum Daily Loads (TMDLs), a tool which helps waterbodies meet their water quality standards. A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. Water quality standards are set by States, Territories, and Tribes. They identify the uses for each waterbody, for example, drinking water supply, contact recreation (swimming), and aquatic life support (fishing), and the scientific criteria to support that use. The CWA, section 303, establishes the water quality standards and TMDL programs.

Prior to submitting a Notice of Intent, any new discharger (see 40 CFR 122.2) to a 303(d) waterbody must be able to demonstrate compliance with 40 CFR 122.4(i). In essence, you are a new discharger if your facility started discharging after August 13, 1979 and your storm water was not previously permitted. Any discharger to a waterbody for which there is an approved TMDL must confirm that the TMDL allocated a portion of the load for storm water point source discharges. These provisions apply only to discharges containing the pollutant(s) for which the waterbody is impaired or the TMDL developed.

Part 1.2.3.8.1 (which applies to new storm water discharges and not to existing discharges) is designed to better ensure compliance with NPDES regulations at 40 CFR 122.4(i), which include certain special requirements for new discharges into impaired waterbodies. Lists of impaired waterbodies (sometimes referred to as 303(d) waterbodies) may be obtained from appropriate State environmental offices or their internet sites. NPDES regulations at 40 CFR 122.4(i) prohibit discharges unless it can be shown that:

1. There are sufficient remaining pollutant load allocations to allow for the discharge; and

2. The existing dischargers into that segment are subject to compliance schedules designed to bring the segments into compliance with applicable water quality standards.

Part 1.2.3.8.2 (which applies to both new and existing storm water discharges) is designed to better ensure compliance with NPDES regulations at 40 CFR 122.4(d), which requires compliance with State water quality standards. The eligibility condition prohibits coverage of new or existing discharges of a particular pollutant where there is a TMDL, unless the discharge is consistent with the TMDL. Lists of waterbodies with TMDLs may be obtained from appropriate State environmental offices or their internet sites and from EPA's TMDL internet site at *http://www.epa.gov/owow/tmdl/index.html*.

E. Storm Water Discharges Subject to Anti-Degradation Provisions of Water Quality Standards

Part 1.2.3.9 of today's final MSGP includes a new provision which clarifies that discharges which do not comply with applicable anti-degradation provisions of State water quality standards are not eligible for coverage under the MSGP. This eligibility condition is designed to better ensure compliance with NPDES regulations at 40 CFR 122.4(d), which requires compliance with State water quality standards. Anti-degradation provisions may be obtained from the appropriate State environmental office or their internet sites.

F. Storm Water Discharges Previously Covered by an Individual Permit

The 1995 MSGP contained general prohibitions on coverage where a discharge was covered by another NPDES permit (Part I.B.3.d) and where a permit had been terminated other than at the request of the permittee (Part

I.B.3.e.). It was therefore possible to obtain coverage by requesting termination of an individual permit and then submitting an NOI for coverage under the MSGP. This could be desirable from both the discharger's and EPA's perspective for a variety of reasons, for example, where a wastewater permit included storm water outfalls, but the wastewater outfalls had been eliminated. Being able to use the general permit would reduce the application cost to the permittee and the administrative burden of permit issuance to the Agency. Today's permit clarifies the conditions under which transfer from an individual permit to this general permit would be acceptable (Part 1.2.3.3.2).

In order to avoid conflict with the anti-backsliding provisions of the CWA, transfer from an individual permit to the MSGP will only be allowed where both of the following conditions are met:

- The individual permit did not contain numeric water quality-based effluent limitations developed for the storm water component of the discharge; and
- The permittee includes any specific BMPs for storm water required under the individual permit in their storm water pollution prevention plan.

Implementation of a comprehensive Storm Water Pollution Prevention Plan for the entire facility (as opposed to selected outfalls in an individual permit) and compliance with all other conditions of the MSGP is deemed to be at least as stringent a technology-based permit limit as the conditions of the individual permit. This assumption is only made where the previous permit did not contain any specific water quality-based effluent limitations on storm water discharges (e.g., storm water contained high levels of zinc and the individual permit contained a zinc limit developed to ensure compliance with the State water quality criteria).

G. Requiring Coverage Under an Individual Permit or an Alternate General Permit

Part 9.12 of today's final MSGP provides that EPA may require an individual permit or coverage under a separate general permit instead of today's MSGP. This is in accord with NPDES regulations at 40 CFR 122.28(b)(3). These regulations also provide that any interested party may petition EPA to take such an action. The issuance of the individual permit or alternate general permit would be in accordance with 40 CFR Part 124 and would provide for public comment and appeal of any final permit decision. The circumstances in which such an action would be taken are set forth at 40 CFR 122.28(b)(3).

VI. Summary of Common Permit Conditions

The following section describes the permit conditions common to discharges from all the industrial activities covered by today's final MSGP. These conditions are largely the same as the conditions of the 1995 MSGP.

A. Notification Requirements

General permits for storm water discharges associated with industrial activity must require the submission of a Notice of Intent (NOI) prior to the authorization of such discharges (see 40 CFR 122.28(b)(2)(i), April 2, 1992 (57 FR 11394)). Consistent with these regulatory requirements, today's final MSGP establishes NOI requirements. These requirements apply to facilities currently covered by the 1995 MSGP, as well as new facilities seeking coverage. EPA made minor modifications to the NOI form to allow the discharger, the Agency and the public to more easily determine sector-specific conditions that will apply to the facility. Further modifications proposed on March 30, 2000 (65 FR 17010) require review and approval by the Office of Management and Budget under the Paperwork Reduction Act. EPA will have all appropriate approvals in place prior to requiring the use of the expanded NOI form. In the interim the NOI form with the minor modifications, contained in this notice, is in effect.

The information requirements of the revised NOI form are described below:

1. Content of NOI

a. An indication of which permit the operator is filing the NOI for (e.g., a facility in New Hampshire would be filing for coverage under permit NHR05*###, a facility located on Navajo Reservation lands in New Mexico under the AZR05*##I permit, a private contractor operating a federal facility in Colorado that is not located on Indian Country lands under the COR05*##F permit, etc.);

b. The name, address, and telephone number of the operator filing the NOI for permit coverage;

c. An indication of whether the owner of the site is a Federal, State, Tribal, private, or other public entity;

d. The name (or other identifier), address, county, and latitude/longitude of the facility for which the NOI is submitted (latitude/longitude will be accepted in either degree-minute-second or decimal format);

e. An indication of whether the facility is located on Indian Country lands;

f. An indication of whether the facility is a federal facility operated by the federal government;

g. The name of the receiving water(s);

h. The name of the municipal operator if the discharge is through a municipal separate storm sewer system prior to discharge to a water of the U.S.;

i. Up to four 4-digit Standard Industrial Classification (SIC) codes that best represent the principal products produced or services rendered, including hazardous waste treatment, storage, or disposal activities, land disposal facilities that receive or have received any industrial waste, steam electric power generating facilities, or treatment works treating domestic sewage;

j. Identification of applicable sector(s) in this permit, as designated in Table 1, for facility discharges associated with industrial activity the operator wishes to have covered under this permit;

k. Certification that a storm water pollution prevention plan (SWPPP) meeting the requirements of Part 4 has been developed (with a copy of the permit language in the SWPPP);

l. Based on the instructions in Addendum A, whether any listed threatened or endangered species, or designated critical habitat, are in proximity to the storm water discharges or storm water discharge-related activities to be covered by this permit;

m. Whether any historic property listed or eligible for listing on the National Register of Historic Places is located on the facility or in proximity to the discharge;

n. A signed and dated certification, signed by a authorized representative of the facility as detailed in Part 9.7 and maintained with the SWPPP that certifies the following:

I certify under penalty of law that I have read and understand the Part 1.2 eligibility requirements for coverage under the multi-sector storm water general permit including those requirements relating to the protection of endangered or threatened species or critical habitat. To the best of my knowledge, the storm water and allowable non-storm discharges authorized by this permit (and discharged related activities), are not likely and will not likely, jeopardize endangered or threatened species or critical habitat, or are otherwise eligible for coverage under Part 1.2.3.6 of the permit. To the best of my knowledge, I further certify that such discharges and discharge related activities do not have an effect on properties listed or eligible for listing on the National Register of Historic Places under the National Historic Preservation Act, or are otherwise eligible for coverage under Part 1.2.3.7 of the permit. I

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Appendix C6

Multi-Sector General Permit Coverages
(Federal Register Volume 65, No. 210, October 30, 2000, Notices)

- SIC Codes Eligible for Permit Coverage under the MSGP (pp. 64804-64806)
- Monitoring Concentration Limits in SIC-Code Categories and Specific SIC-Code Requirements for Permitted Industrial Activities (pp. 64820-64852)
- Spill Reporting (p. 64760)

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SIC Codes Eligible for Permit Coverage under the MSGP
(Federal Register Volume 65, No. 210, October 30, 2000, Notices, pp. 64804-64806)

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1.2 Eligibility

You must maintain permit eligibility to discharge under this permit. Any discharges that are not compliant with the eligibility conditions of this permit are not authorized by the permit and you must either apply for a separate permit to cover those ineligible discharges or take necessary steps to make the discharges eligible for coverage.

1.2.1 Facilities Covered

Your permit eligibility is limited to discharges from facilities in the ''sectors'' of industrial activity based on Standard Industrial Classification (SIC) codes and Industrial Activity Codes summarized in Table 1–1. References to ''sectors'' in this permit (*e.g.*, sector-specific monitoring requirements, *etc.*) refer to these sectors.

TABLE 1–1.—SECTORS OF INDUSTRIAL ACTIVITY COVERED BY THIS PERMIT

SIC code or activity code [1]	Activity represented
Sector A: Timber Products	
2411	Log Storage and Handling (Wet deck storage areas only authorized if no chemical additives are used in the spray water or applied to the logs).
2421	General Sawmills and Planning Mills.
2426	Hardwood Dimension and Flooring Mills.
2429	Special Product Sawmills, Not Elsewhere Classified.
2431–2439 (except 2434)	Millwork, Veneer, Plywood, and Structural Wood (see Sector W).
2448, 2449	Wood Containers.
2451, 2452	Wood Buildings and Mobile Homes.
2491	Wood Preserving.
2493	Reconstituted Wood Products.
2499	Wood Products, Not Elsewhere Classified.
Sector B: Paper and Allied Products	
2611	Pulp Mills.
2621	Paper Mills.
2631	Paperboard Mills.
2652–2657	Paperboard Containers and Boxes.
2671–2679	Converted Paper and Paperboard Products, Except Containers and Boxes.
Sector C: Chemical and Allied Products	
2812–2819	Industrial Inorganic Chemicals.
2821–2824	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic and Other Manmade Fibers Except Glass.
2833–2836	Medicinal chemicals and botanical products; pharmaceutical preparations; in vitro and in vivo diagnostic substances; biological products, except diagnostic substances.
2841–2844	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations.
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products.
2861–2869	Industrial Organic Chemicals.
2873–2879	Agricultural Chemicals.
2873	Facilities that Make Fertilizer Solely from Leather Scraps and Leather Dust.
2891–2899	Miscellaneous Chemical Products.
3952 (limited to list)	Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints and Artist's Watercolors.
Sector D: Asphalt Paving and Roofing Materials and Lubricants	
2951, 2952	Asphalt Paving and Roofing Materials.
2992, 2999	Miscellaneous Products of Petroleum and Coal.
Sector E: Glass Clay, Cement, Concrete, and Gypsum Products	
3211	Flat Glass.
3221, 3229	Glass and Glassware, Pressed or Blown.
3231	Glass Products Made of Purchased Glass.
3241	Hydraulic Cement.
3251–3259	Structural Clay Products.
3261–3269	Pottery and Related Products.
3271–3275	Concrete, Gypsum and Plaster Products.
3291–3299	Abrasive, Asbestos, and Miscellaneous Nonmetallic Mineral Products.
Sector F: Primary Metals	
3312–3317	Steel Works, Blast Furnaces, and Rolling and Finishing Mills.
3321–3325	Iron and Steel Foundries.
3331–3339	Primary Smelting and Refining of Nonferrous Metals.
3341	Secondary Smelting and Refining of Nonferrous Metals.
3351–3357	Rolling, Drawing, and Extruding of Nonferrous Metals.

TABLE 1–1.—SECTORS OF INDUSTRIAL ACTIVITY COVERED BY THIS PERMIT—Continued

SIC code or activity code [1]	Activity represented
3363–3369	Nonferrous Foundries (Castings).
3398, 3399	Miscellaneous Primary Metal Products.
Sector G: Metal Mining (Ore Mining and Dressing)	
1011	Iron Ores.
1021	Copper Ores.
1031	Lead and Zinc Ores.
1041, 1044	Gold and Silver Ores.
1061	Ferroalloy Ores, Except Vanadium.
1081	Metal Mining Services.
1094, 1099	Miscellaneous Metal Ores.
Sector H: Coal Mines and Coal Mining Related Facilities	
1221–1241	Coal Mines and Coal Mining-Related Facilities.
Sector I: Oil and Gas Extraction and Refining	
1311	Crude Petroleum and Natural Gas.
1321	Natural Gas Liquids.
1381–1389	Oil and Gas Field Services.
2911	Petroleum Refineries.
Sector J: Mineral Mining and Dressing	
1411	Dimension Stone.
1422–1429	Crushed and Broken Stone, Including Rip Rap.
1442, 1446	Sand and Gravel
1455, 1459	Clay, Ceramic, and Refractory Materials.
1474–1479	Chemical and Fertilizer Mineral Mining.
1481	Nonmetallic Minerals Services, Except Fuels.
1499	Miscellaneous Nonmetallic Minerals, Except Fuels.
Sector K: Hazardous Waste Treatment, Storage, or Disposal Facilities	
HZ	Hazardous Waste Treatment Storage or Disposal.
Sector L: Landfills and Land Application Sites	
LF	Landfills, Land Application Sites, and Open Dumps.
Sector M: Automobile Salvage Yards	
5015	Automobile Salvage Yards.
Sector N: Scrap Recycling Facilities	
5093	Scrap Recycling Facilities.
Sector O: Steam Electric Generating Facilities	
SE	Steam Electric Generating Facilities.
Sector P: Land Transportation and Warehousing	
4011, 4013	Railroad Transportation.
4111–4173	Local and Highway Passenger Transportation.
4212–4231	Motor Freight Transportation and Warehousing.
4311	United States Postal Service.
5171	Petroleum Bulk Stations and Terminals.
Sector Q: Water Transportation	
4412–4499	Water Transportation.
Sector R: Ship and Boat Building or Repairing Yards	
3731,3732	Ship and Boat Building or Repairing Yards.
Sector S: Air Transportation	
4512–4581	Air Transportation Facilities.

TABLE 1–1.—SECTORS OF INDUSTRIAL ACTIVITY COVERED BY THIS PERMIT—Continued

SIC code or activity code [1]	Activity represented
Sector T: Treatment Works	
TW	Treatment Works.
Sector U: Food and Kindred Products	
2011–2015	Meat Products.
2021–2026	Dairy Products.
2032	Canned, Frozen and Preserved Fruits, Vegetables and Food Specialties.
2041–2048	Grain Mill Products.
2051–2053	Bakery Products.
2061–2068	Sugar and Confectionery Products.
2074–2079	Fats and Oils.
2082–2087	Beverages.
2091–2099	Miscellaneous Food Preparations and Kindred Products.
2111–2141	Tobacco Products.
Sector V: Textile Mills, Apparel, and Other Fabric Product Manufacturing, Leather and Leather Products	
2211–2299	Textile Mill Products.
2311–2399	Apparel and Other Finished Products Made From Fabrics and Similar Materials.
3131–3199 (except 3111)	Leather and Leather Products, except Leather Tanning and Finishing (see Sector Z).
Sector W: Furniture and Fixtures	
2434	Wood Kitchen Cabinets.
2511–2599	Furniture and Fixtures.
Sector X: Printing and Publishing	
2711–2796	Printing, Publishing, and Allied Industries.
Sector Y: Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries.	
3011	Tires and Inner Tubes.
3021	Rubber and Plastics Footwear.
3052, 3053	Gaskets, Packing, and Sealing Devices and Rubber and Plastics Hose and Belting.
3061, 3069	Fabricated Rubber Products, Not Elsewhere Classified.
3081–3089	Miscellaneous Plastics Products.
3931	Musical Instruments.
3942–3949	Dolls, Toys, Games and Sporting and Athletic Goods.
3951–3955 (except 3952 facilities as specified in Sector C).	Pens, Pencils,and Other Artists' Materials.
3961, 3965	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal.
3991–3999	Miscellaneous Manufacturing Industries.
3411–3499	Fabricated Metal Products, Except Machinery and Transportation Equipment.
3911–3915	Jewelry, Silverware, and Plated Ware.
Sector AB: Transportation Equipment, Industrial or Commercial Machinery	
3511–3599 (except 3571–3579)	Industrial and Commercial Machinery (except Computer and Office Equipment) (see Sector AC).
3711–3799 (except 3731, 3732)	Transportation Equipment (except Ship and Boat Building and Repairing) (see Sector R).
Sector AC: Electronic, Electrical, Photographic, and Optical Goods	
3571–3579	Computer and Office Equipment.
3612–3699	Electronic, Electrical Equipment and Components, except Computer Equipment.
3812	Measuring, Analyzing and Controlling Instrument; Photographic and Optical Goods.
Sector AD: Non-Classified Facilities	
N/A	Other storm water discharges designated by the Director as needing a permit (see 40 CFR 122.26(g)(1)(l)) or any facility discharging storm water associated with industrial activity not described by any of Sectors A–AC. **Note:** Facilities may not elect to be covered under Sector AD. Only the Director may assign a facility to Sector AD.

[1] A complete list of SIC codes (and conversions from the newer North American Industry Classification System (NAICS)) can be obtained from the Internet at *http://www.census.gov/epcd/www/naics.html* or in paper form from various locations in the document entitled ''Handbook of Standard Industrial Classifications,'' Office of Management and Budget, 1987. Industrial activity codes are provided on the Multi-Sector General Permit Notice of Intent (NOI) application form (EPA Form Number 3510–6).

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Monitoring Concentration Limits in SIC-Code Categories and Specific SIC-Code Requirements for Permitted Industrial Activities

(Federal Register Volume 65, No. 210, October 30, 2000, Notices, pp. 64820-64852)

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TABLE A–1.—SECTOR-SPECIFIC NUMERIC LIMITATIONS AND BENCHMARK MONITORING

[Sector of permit affected/supplemental requirements]

Subsector (Discharge may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring cut-off concentration [1]	Numeric limitation [2]
General Sawmills and Planning Mills (SIC 2421)	Chemical Oxygen Demand (COD).	120.0 mg/L.	
	Total Suspended Solids (TSS).	100 mg/L.	
	Total Zinc	0.117 mg/L.	
Wood Preserving (SIC 2491)	Total Arsenic	0.16854 mg/L.	
	Total Copper	0.0636 mg/L.	
Log Storage and Handling (SIC 2411)	Total Suspended Solids (TSS).	100 mg/L.	
Wet Decking Discharges at Log Storage and Handling Areas (SIC 2411).	pH		6.0–9.0 s.u.
	Debris (woody material such as bark, twigs, branches, heartwood, or sapwood).		No Discharge of debris that will not pass through a 2.54 cm (1″) diameter round opening.
Hardwood Dimension and Flooring Mills; Special Products Sawmills, not elsewhere classified; Millwork, Veneer, Plywood and Structural Wood; Wood Containers; Wood Buildings and Mobile Homes; Reconstituted Wood Products; and Wood Products Facilities not elsewhere classified (SIC Codes 2426, 2429, 2431–2439 (except 2434), 2448, 2449, 2451, 2452, 2593, and 2499).	Chemical Oxygen Demand (COD).	120.0 mg/L.	
	Total Suspended Solids (TSS).	100.0 mg/L.	

[1] Monitor once/quarter for the year 2 and year 4 monitoring years.
[2] Monitor once per year for each monitoring year.

6.B Sector B—Paper and Allied Products Manufacturing

6.B.1 Covered Storm Water Discharges

The requirements in Part 6.B apply to storm water discharges associated with industrial activity from Paper and Allied Products Manufacturing facilities as identified by the SIC Codes specified under Sector B in Table 1–1 of Part 1.2.1.

6.B.2 Industrial Activities Covered by Sector B

The types of activities that permittees under Sector B are primarily engaged in are:

6.B.2.1 Manufacture of pulps from wood and other cellulose fibers and from rags;

6.B.2.2 Manufacture of paper and paperboard into converted products, *i.e.* paper coated off the paper machine, paper bags, paper boxes and envelopes;

6.B.2.3 Manufacture of bags of plastic film and sheet.

6.B.3 Monitoring and Reporting Requirements (See also Part 5)

TABLE B–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring and cutoff concentration [1]	Numeric limitation
Part of Permit Affected/Supplemental Requirements			
Paperboard Mills (SIC Code 2631)	COD	120.0 mg/L.	

[1] Monitor once/quarter for the year 2 and year 4 monitoring years

6.C Sector C—Chemical and Allied Products Manufacturing

6.C.1 Covered Storm Water Discharges

The requirements in Part 6.C apply to storm water discharges associated with industrial activity from Chemical and Allied Products Manufacturing facilities as identified by the SIC Codes specified under Sector C in Table 1–1 of Part 1.2.1.

6.C.2 Industrial Activities Covered by Sector C

The requirements listed under this Part apply to storm water discharges associated with industrial activity from a facility engaged in manufacturing the following products:

6.C.2.1 basic industrial inorganic chemicals;

6.C.2.2 plastic materials and synthetic resins, synthetic rubbers, and cellulosic and other human made fibers, except glass;

6.C.2.3 soap and other detergents, including facilities producing glycerin from vegetable and animal fats and oils; speciality cleaning, polishing and sanitation preparations; surface active preparations used as emulsifiers, wetting agents and finishing agents, including sulfonated oils; and perfumes, cosmetics and other toilet preparations;

6.C.2.4 paints (in paste and ready mixed form); varnishes; lacquers; enamels and shellac; putties, wood fillers, and sealers; paint and varnish removers; paint brush cleaners; and allied paint producers;

6.C.2.5 industrial organic chemicals;

6.C.2.6 industrial and household adhesives, glues, caulking compounds, sealants, and linoleum, tile and rubber cements from vegetable, animal or synthetic plastic materials; explosives; printing ink, including gravure, screen process and lithographic inks; miscellaneous chemical preparations such as fatty acids, essential oils, gelatin (except vegetable), sizes, bluing, laundry sours, writing and stamp pad ink, industrial compounds such as boiler and heat insulating compounds, and chemical supplies for foundries;

6.C.2.7 ink and paints, including china painting enamels, indian ink, drawing ink, platinum paints for burnt wood or leather work, paints for china painting, artists' paints and artists' water colors;

6.C.2.8 nitrogenous and phosphatic basic fertilizers, mixed fertilizers, pesticides and other agricultural chemicals.

6.C.3 Limitations on Coverage

6.C.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.3.3) Not covered by this permit: non-storm water discharges containing inks, paints or substances (hazardous, nonhazardous, *etc.*) resulting from an onsite spill, including materials collected in drip pans; washwater from material handling and processing areas; and washwater from drum, tank or container rinsing and cleaning.

6.C.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.C.4.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Also identify where any of the following may be exposed to precipitation/surface runoff: processing and storage areas; access roads, rail cars and tracks; areas where substances are transferred in bulk; and operating machinery.

6.C.4.2 *Potential Pollutant Sources.* (See also Part 4.2.4) Describe the following sources and activities that have potential pollutants associated with them: loading, unloading and transfer of chemicals; outdoor storage of salt, pallets, coal, drums, containers, fuels, fueling stations; vehicle and equipment maintenance/cleaning areas; areas where the treatment, storage or disposal (on- or off-site) of waste/wastewater occur; storage tanks and other containers; processing and storage areas; access roads, rail cars and tracks; areas where the transfer of substances in bulk occurs; and areas where machinery operates.

6.C.4.3 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1) As part of your good housekeeping program, include a schedule for regular pickup and disposal of garbage and waste materials, or adopt other appropriate measures to reduce the potential for discharging storm water that has contacted garbage or waste materials. Routinely inspect the condition of drums, tanks and containers for potential leaks.

6.C.5 Monitoring and Reporting Requirements (See also Part 5)

TABLE C–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring cut-off concentration [1]	Numeric limitation [2]
Part of Permit Affected/Supplemental Requirements			
Phosphate Subcategory of the Fertilizer Manufacturing Point Source Category (40 CFR § 418.10)—applies to precipitation runoff, that during manufacturing or processing, comes into contact with any raw materials, intermediate product, finished product, by-products or waste product (SIC 2874).	Total Phosphorus (as P) ...	.....	105.0 mg/L, daily max. 35 mg/L, 30-day avg.
	Fluoride	.....	75.0 mg/L, daily max. 25.0 mg/L, 30-day avg.
Agricultural Chemicals (2873–2879)	Nitrate plus Nitrite Nitrogen	0.68 mg/L.	
	Total Recoverable Lead	0.0816 mg/L.	
	Total Recoverable Iron	1.0 mg/L.	
	Total Recoverable Zinc	0.117 mg/L.	
	Phosphorus	2.0 mg/L.	
Industrial Inorganic Chemicals (2812–2819)	Total Recoverable Aluminum	0.75 mg/L 1.0 mg/L	Nitrate plus Nitrite Nitrogen
	Total Recoverable Iron.	0.68 mg/L	
Soaps, Detergents, Cosmetics, and Perfumes (SIC 2841–2844).	Nitrate plus Nitrite Nitrogen	0.68 mg/L.	
	Total Recoverable Zinc	0.117 mg/L..	
Plastics, Synthetics, and Resins (SIC 2821–2824)	Total Recoverable Zinc	0.117 mg/L.	

[1] Monitor once/quarter for the year 2 and year 4 Monitoring Years.
[2] Monitor once/year for each Monitoring Year.

6.D Sector D—Asphalt Paving and Roofing Materials and Lubricant Manufacturers

6.D.1 Covered Storm Water Discharges

The requirements in Part 6.D apply to storm water discharges associated with industrial activity from Asphalt Paving and Roofing Materials and Lubricant Manufacturers facilities as identified by the SIC Codes specified under Sector D in Table 1–1 of Part 1.2.1.

6.D.2 Industrial Activities Covered by Sector D

The types of activities that permittees under Sector D are primarily engaged in are:

6.D.2.1 manufacturing asphalt paving and roofing materials;

6.D.2.2 portable asphalt plant facilities;

6.D.2.3 manufacturing lubricating oils and greases.

6.D.3 Limitations on Coverage

The following storm water discharges associated with industrial activity are not authorized by this permit:

6.D.3.1 discharges from petroleum refining facilities, including those that manufacture asphalt or asphalt products that are classified as SIC code 2911;

6.D.3.2 discharges from oil recycling facilities;

6.D.3.3 discharges associated with fats and oils rendering.

6.D.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.D.4.1 *Inspections.* (See also Part 4.2.7.2.1.5) Inspect at least once per month, as part of the maintenance program, the following areas: Material storage and handling areas, liquid storage tanks, hoppers/silos, vehicle and equipment maintenance, cleaning and fueling areas, material handling vehicles, equipment and processing areas. Ensure appropriate action is taken in response to the inspection by implementing tracking or follow up procedures.

6.D.5 Monitoring and Reporting Requirements. (See also part 5)

TABLE D–1.—SECTOR-SPECIFIC NUMERIC LIMITATIONS AND BENCHMARK MONITORING

Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring cut-off concentration [1]	Numeric Limitation [2]
Sector of Permit Affected/Supplemental Requirements			
Asphalt Paving and Roofing Materials (SIC 2951, 2952)	Total Suspended Solids (TSS).	100mg/L.	
Discharges from areas where production of asphalt paving and roofing emulsions occurs (SIC 2951, 2952).	TSS	.....	23.0 mg/L, daily max 15.0 mg/L 30-day avg.
	Oil and Grease	.....	15.0 mg/L daily max. 10mg/L, 30-day avg.
	pH	.....	6.0–9.0

[1] Monitor once/quarter for the year 2 and year 4 monitoring years.
[2] Monitor once per year for each monitoring year.

6.E Sector E—Glass, Clay, Cement, Concrete, and Gypsum Products

6.E.1 Covered Storm Water Discharges

The requirements in Part 6.E apply to storm water discharges associated with industrial activity from Glass, Clay, Cement, Concrete, and Gypsum Products facilities as identified by the SIC Codes specified under Sector E in Table 1–1 of part 1.2.1.

6.E.2 Industrial Activities Covered by Sector E

The requirements listed under this permit apply to storm water discharges associated with industrial activity from a facility engaged in either manufacturing the following products or performing the following activities:

6.E.2.1 flat, pressed, or blown glass or glass containers;

6.E.2.2 hydraulic cement;

6.E.2.3 clay products including tile and brick;

6.E.2.4 pottery and porcelain electrical supplies;

6.E.2.5 concrete products;

6.E.2.6 gypsum products;

6.E.2.7 minerals and earths, ground or otherwise treated;

6.E.2.8 non-clay refractories:

6.E.2.9. lime manufacturing

6.E.2.10 cut stone and stone products

6.E.2.11 asbestos products

6.E.2.12 mineral wool and mineral wool insulation products.

6.E.3 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.E.3.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify the locations of the following, as applicable: bag house or other dust control device; recycle/sedimentation pond, clarifier or other device used for the treatment of process wastewater, and the areas that drain to the treatment device.

6.E.3.2 *Good Housekeeping Measures.* (See also Part 4.2.2.3) With good housekeeping prevent or minimize the discharge of: spilled cement; aggregate (including sand or gravel); kiln dust; fly ash; settled dust; or other significant material in storm water from paved portions of the site that are exposed to storm water. Consider using regular sweeping or other equivalent measures to minimize the presence of these materials. Indicate in your SWPPP the frequency of sweeping or equivalent measures. Determine the frequency from the amount of industrial activity occurring in the area and the frequency of precipitation, but it must be performed at least once a week if cement, aggregate, kiln dust, fly ash or settled dust are being handled/processed. You must also prevent the exposure of fine granular solids (cement, fly ash, kiln dust, *etc.*) to storm water where practicable, by storing these materials in enclosed silos/hoppers, buildings or under other covering.

6.E.3.3 *Inspections.* (See also Part 4.2.7.2.1.5) Perform inspections while the facility is in operation and include all of the following areas exposed to storm water: material handling areas, above ground storage tanks, hoppers or silos, dust collection/containment systems, truck wash down/equipment cleaning areas.

6.E.3.4 *Certification.* (See also Part 4.4.1) For facilities producing ready-mix concrete, concrete block, brick or similar products, include in the non-storm water discharge certification a description of measures that insure that process waste water resulting from truck washing, mixers, transport buckets, forms or other equipment are discharged in accordance with NPDES requirements or are recycled.

6.E.4 Monitoring and Reporting Requirements. (See also Part 5)

TABLE E–1.—SECTOR-SPECIFIC NUMERIC LIMITATIONS AND BENCHMARK MONITORING

Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring cut-off concentration [1]	Numeric limitaiton [2]
Sector of Permit Affected/Supplemental Requirements			
Clay Product Manufacturers ..... (SIC 3245–3259,3261–3269)	Total Recoverable Aluminum.	0.75 mg/L	
Concrete and Gypsum Product Manufacturers (SIC 3271–3275).	TSS	100 mg/L	
	Total Recoverable Iron	1.0 mg/L	
Cement Manufacturing Facility, Material Storage Runoff: Any discharge composed of runoff that derives from the storage of materials including raw materials, intermediate products, finished products, and waste materials that are used in or derived from the manufacture of cement.	Total Suspended Solids (TTS≤.	50 mg/L daily max..	
	pH	.....	6.0–9.0 S.U.

[1] Monitor once/quarter for the year 2 and year 4 monitoring years.
[2] Monitor once per year for each monitoring year.

6.F Sector F—Primary Metals

6.F.1 Covered Storm Water Discharges

The requirements in Part 6.F apply to storm water discharges associated with industrial activity from Primary Metals facilities as identified by the SIC Codes specified under Sector F in Table 1–1 of Part 1.2.1.

6.F.2 Industrial Activities Covered by Sector F

The types of activities under this Part are facilities primarily engaged in are:

6.F.2.1 Steel works, blast furnaces, and rolling and finishing mills including: steel wire drawing and steel nails and spikes; cold-rolled steel sheet, strip, and bars; and steel pipes and tubes;

6.F.2.2 Iron and steel foundries, including: gray and ductile iron, malleable iron, steel investment, and steel foundries not elsewhere classified;

6.F.2.3 Primary smelting and refining of nonferrous metals, including: primary smelting and refining of copper, and primary production of aluminum;

6.F.2.4 Secondary smelting and refining of nonferrous metals;

6.F.2.5 Rolling, drawing, and extruding of nonferrous metals, including: rolling, drawing, and extruding of copper; rolling, drawing and extruding of nonferrous metals except copper and aluminum; and drawing and insulating of nonferrous wire;

6.F.2.6 Nonferrous foundries (castings), including: aluminum die-casting, nonferrous die-casting, except aluminum, aluminum foundries, copper foundries, and nonferrous foundries, except copper and aluminum;

6.F.2.7 Miscellaneous primary metal products, not elsewhere classified, including: metal heat treating, and primary metal products not elsewhere classified;

Activities covered include but are not limited to storm water discharges associated with cooking operations, sintering plants, blast furnaces, smelting operations, rolling mills, casting operations, heat treating, extruding, drawing, or forging all types of ferrous and nonferrous metals, scrap and ore.

6.F.3 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.F.3.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Also identify where any of the following activities may be exposed to precipitation/surface runoff: storage or disposal of wastes such as spent solvents/baths, sand, slag/dross; liquid storage tanks/drums; processing areas including pollution control equipment (*e.g.,* baghouses); and storage areas of raw material such as coal, coke, scrap, sand, fluxes, refractories or metal in any form. In addition, indicate where an accumulation of significant amounts of particulate matter could occur from such sources as furnace or oven emissions, losses from coal/coke handling operations, etc., and which could result in a discharge of pollutants to waters of the United States.

6.F.3.2 *Inventory of Exposed Material.* (See also Part 4.2.4) Include in the inventory of materials handled at the site that potentially may be exposed to precipitation/runoff, areas where deposition of particulate matter from process air emissions or losses during material handling activities are possible.

6.F.3.3 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1) As part of your good housekeeping program, include: a cleaning/maintenance program for all impervious areas of the facility where particulate matter, dust or debris may accumulate, especially areas where material loading/unloading, storage, handling and processing occur; the paving of areas where vehicle traffic or material storage occur but where vegetative or other stabilization methods are not practicable (institute a sweeping program in these areas too). For unstabilized areas where sweeping is not practicable, consider using storm water management devices such as sediment traps, vegetative buffer strips, filter fabric fence, sediment filtering boom, gravel outlet protection or other equivalent measures that effectively trap or remove sediment.

6.F.3.4 *Inspections.* (See also Part 4.2.7.2.1.5) Conduct inspections routinely, or at least on a quarterly basis, and address all potential sources of pollutants, including (if applicable): air pollution control equipment (*e.g.,* baghouses, electrostatic precipitators, scrubbers and cyclones) for any signs of degradation (*e.g.,* leaks, corrosion or improper operation) that could limit their efficiency and lead to excessive emissions. Consider monitoring air flow at inlets/outlets (or use equivalent measures) to check for leaks (*e.g.*, particulate deposition) or blockage in ducts. Also inspect all process and material handling equipment (*e.g.,* conveyors, cranes and vehicles) for leaks, drips or the potential loss of material; and material storage areas (*e.g.*, piles, bins or hoppers for storing coke, coal, scrap or slag, as well as chemicals stored in tanks/drums) for signs of material losses due to wind or storm water runoff.

6.F.4 Monitoring and Reporting Requirements. (See also Part 5)

TABLE F–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

Sector of permit affected/supplemental requirements—			
Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring cutoff concentration [1]	Numeric limitation
Steel Works, Blast Furnaces, and Rolling and Finishing Mills (SIC 3312–3317).	Total Recoverable Aluminum	0.75 mg/L	
	Total Recoverable Zinc	0.117 mg/L.	
Iron and Steel Foundries (SIC 3321–3325)	Total Recoverable Aluminum	0.75 mg/L.	
	Total Suspended Solids	100 mg/L	
	Total Recoverable Copper	0.0636 mg/L	
	Total Recoverable Iron	1.0 mg/L	
	Total Recoverable Zinc	0.117 mg/L.	
Rolling, Drawing, and Extruding of Non-Ferrous Metals (SIC 3351–3357).	Total Recoverable Copper	0.0636 mg/L	
	Total Recoverable Zinc	0.117 mg/L.	
Non-Ferrous Foundries (SIC 3363–3369)	Total Recoverable Copper	0.636 mg/L.	
	Total Recoverable Zinc	0.117 mg/L.	

[1] Monitor once/quarter for the year 2 and year 4 Monitoring Years.

6.G Sector G—Metal Mining (Ore Mining and Dressing)

6.G.1 Covered Storm Water Discharges

The requirements in Part 6.G apply to storm water discharges associated with industrial activity from active, temporarily inactive and inactive metal mining and ore dressing facilities, including mines abandoned on Federal Lands, as identified by the SIC Codes specified under Sector G in Table 1–1 of Part 1.2.1. Coverage is required for facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the operation.

6.G.1.1 *Covered Discharges from Inactive Facilities:* All storm water discharges.

6.G.1.2 *Covered Discharges from Active and Temporarily Inactive Facilities:* Only the storm water discharges from the following areas are covered: waste rock/overburden piles if composed entirely of storm water and not combining with mine drainage; topsoil piles; offsite haul/access roads; onsite haul/access roads constructed of waste rock/overburden/spent ore if composed entirely of storm water and not combining with mine drainage; onsite haul/access roads not constructed of waste rock/overburden/spent ore except if mine drainage is used for dust control; runoff from tailings dams/dikes when not constructed of waste rock/tailings and no process fluids are present; runoff from tailings dams/dikes when constructed of waste rock/tailings if and no process fluids are present if composed entirely of storm water and not combining with mine drainage; concentration building if no contact with material piles; mill site if no contact with material piles; office/administrative building and housing if mixed with storm water from industrial area; chemical storage area; docking facility if no excessive contact with waste product that would otherwise constitute mine drainage; explosive storage; fuel storage; vehicle/equipment maintenance area/building; parking areas (if necessary); power plant; truck wash areas if no excessive contact with waste product that would otherwise constitute mine drainage; unreclaimed, disturbed areas outside of active mining area; reclaimed areas released from reclamation bonds prior to December 17, 1990; and partially/inadequately reclaimed areas or areas not released from reclamation bonds.

6.G.2 Industrial Activities Covered by Sector G

Note: ''metal mining'' will connote any of the separate activities listed in Part 6.G.2. The types of activities that permittees under Sector G are primarily engaged in are:

6.G.2.1 exploring for metallic minerals (ores), developing mines and the mining of ores;

6.G.2.2 ore dressing and beneficiating, whether performed at co-located, dedicated mills or separate (*i.e.,* custom) mills.

6.G.3 Limitations on Coverage

6.G.3.1 *Prohibition of Storm Water Discharges.*

Storm water discharges not authorized by this permit: discharges from active metal mining facilities which are subject to effluent limitation guidelines for the Ore Mining and Dressing Point Source Category (40 CFR Part 440).

Note: discharges that come in contact with overburden/waste rock are subject to 40 CFR Part 440, providing: the discharges drain to a point source (either naturally or as a result of intentional diversion) and they combine with ''mine drainage'' that is otherwise regulated under the Part 440 regulations. Discharges from overburden/waste rock can be covered under this permit if they are composed entirely of storm water, do not combine with sources of mine drainage that are subject to 40 CFR Part 440, and meet other eligibility criteria contained in Part 1.2.2.1.

6.G.3.2 *Prohibition of Non-Storm Water Discharges.*

Not authorized by this permit: adit drainage and contaminated springs or seeps (see also the standard Limitations on Coverage in Part 1.2.3).

6.G.4 Definitions

6.G.4.1 *Mining Operation*—typically consists of three phases, any one of which individually qualifies as a ''mining activity.'' The phases are the exploration and construction phase, the active phase, and the reclamation phase.

6.G.4.2 *Exploration and Construction Phase*—entails exploration and land disturbance activities to determine the financial viability of a site. Construction includes the building of site access roads and removal of overburden and waste rock to expose mineable minerals.

6.G.4.3 *Active Phase*—activities including each step from extraction through production of a salable product.

6.G.4.4 *Reclamation Phase*—activities intended to return the land to its pre-mining use

The following definitions are not intended to supercede the definitions of active and inactive mining facilities established by 40 CFR 122.26(b)(14)(iii).

6.G.4.5 *Active Metal Mining Facility*—a place where work or other activity related to the extraction, removal or recovery of metal ore is being conducted. For surface mines, this definition does not include any land where grading has returned the earth to a desired contour and reclamation has begun.

6.G.4.6 *Inactive Metal Mining Facility*—a site or portion of a site where metal mining and/or milling occurred in the past but is not an active facility as defined above, and where the inactive portion is not covered by an active mining permit issued by the applicable State or Federal government agency.

6.G.4.7 *Temporarily Inactive Metal Mining Facility*—a site or portion of a site where metal mining and/or milling occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable State or Federal government agency.

6.G.5 Clearing, Grading and Excavation Activities

Clearing, grading and excavation activities being conducted as part of the exploration and construction phase of a mining operation cannot be covered under this permit if these activities will disturb one or more acre of land. Instead, coverage for these activities must be under the latest version of EPA's General Permit for Storm Water Discharges from Construction Activities (the ''Construction General Permit;'' **Federal Register**, Vol. 63, p. 7858 and for Region 6, **Federal Register**, Vol. 63, p. 36490), or an individual construction permit. If the area of disturbance during the initial phase is less than one acre, you must continue to comply with the requirements of the MSGP–2000.

6.G.5.1 *Requirements for Activities Disturbing 5 or More Acres of Earth.* If the one-acre limit as defined in Part 6.G.5 is attained, coverage for these activities must be under the latest version of EPA's Construction General Permit (or individual permit). You must first obtain and comply with the Construction General Permit's requirements before submitting the separate Construction General Permit Notice of Intent (NOI) form (EPA Form 3510–9). The February 17, 1998 version of the permit can be downloaded from the EPA's Web Site at *www.epa.gov/owm/sw/construction/cgp/cgp-nat.pdf* and Region 6's July 6, 1998 version of the permit at *www.epa.gov/owm/sw/construction/cgp/cgp-reg6.pdf* or obtained from the Office of Water Resource Center at (202) 260–7786. The NOI form is also available from the Web Site at *www.epa.gov/owm/sw/construction/connoi.pdf* or from your EPA Regional office at the address listed under Part 8.3. Discharges in compliance with the provisions of the Construction General Permit are also authorized under the MSGP.

6.G.5.2 *Cessation of Earth Disturbing Activities.* If exploration phase clearing, grading and excavation activities are completed and no further mining activities will occur at the site, you must comply with the requirements for terminating the Construction General Permit, *i.e.,* stabilize and revegetate the disturbed land, submit a Notice of Termination, etc. If active mining activities will ensue, you must apply for coverage under the MSGP–2000 for your storm water discharges and be prepared to implement any new requirements prior to beginning the active phase. It is recommended you terminate your coverage under the Construction General Permit, but it is not mandatory that you do so. If you choose not to terminate your construction General Permit, you will be responsible for complying with all permit conditions of the construction permit in addition to those of the MSGP–2000. The Notice of Termination form is Addendum E to this permit and is available at http://www.epa.gov/owm/sw/industry/msgp/notform.pdf.

6.G.6 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.G.6.1 *SWPPP Requirements for Active and Temporarily Inactive Metal Mining Facilities.*

6.G.6.1.1 *Nature of Industrial Activities.* (See also Part 4.2.2.1) Briefly describe the mining and associated activities that can potentially affect the storm water discharges covered by this permit, including: the total acreage within the mine site; the estimated acreage of disturbed land; the estimated acreage of land proposed to be disturbed throughout the life of the mine; and a general description of the location of the site relative to major transportation routes and communities.

6.G.6.1.2 *Site Map.* (See also Part 4.2.2.3) Also identify the locations of the following (as appropriate): mining/milling site boundaries; access and haul roads; outline of the drainage areas of each storm water outfall within the facility and indicate the types of discharges from the drainage areas; equipment storage, fueling and maintenance areas; materials handling areas; outdoor manufacturing, storage or material disposal areas; chemicals and explosives storage areas; overburden, materials, soils or waste storage areas; location of mine drainage (where water leaves mine) or other process water; tailings piles/ponds (including proposed ones); heap leach pads; off-site points of discharge for mine drainage/process water; surface waters; and boundary of tributary areas that are subject to effluent limitations guidelines.

6.G.6.1.3 *Potential Pollutant Sources.* (See also Part 4.2.4) For each area of the mine/mill site where storm water discharges associated with industrial activities occur, identify the types of pollutants (e.g., heavy metals, sediment) likely to be present in significant amounts. Consider these factors: the mineralogy of the ore and waste rock (*e.g.,* acid forming); toxicity and quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; vegetation of site (if any); history of significant leaks/spills of toxic or hazardous pollutants. Also include a summary of any existing ore or waste rock/overburden characterization data and test results for potential generation of acid rock. If any new data is acquired due to changes in ore type being mined, update your SWPPP with this information.

6.G.6.1.4 *Site Inspections.* (See also Part 4.2.7.2.1.5) Inspect active mining sites at least monthly. Inspect temporarily inactive sites at least quarterly unless adverse weather conditions make the site inaccessible.

6.G.6.1.5 *Employee Training.* (See also Part 4.2.7.2.1.6) Conduct employee training at least annually at active mining and temporarily inactive sites.

6.G.6.1.6 *Controls.* (See also Part 4.2.7) Consider each of the following BMPs. The potential pollutants identified in Part 6.G.6.1.3 shall determine the priority and appropriateness of the BMPs selected. If you determine that one or more of these BMPs are not appropriate for your facility, explain why it is not appropriate. If BMPs are implemented or planned but are not listed here (*e.g.,* substituting a less toxic chemical for a more toxic one), include descriptions of them in your SWPPP.

6.G.6.1.6.1 *Storm Water Diversions.* Consider diverting storm water away from potential pollutant sources. BMP options: interceptor/diversion controls (*e.g.,* dikes, swales, curbs or berms); pipe slope drains; subsurface drains; conveyance systems (*e.g.,* channels or gutters, open top box culverts and waterbars; rolling dips and road sloping; roadway surface water deflector, and culverts); or their equivalents.

6.G.6.1.6.2 *Sediment and Erosion Control.* (See also Part 4.2.7.2.2.1) At active and temporarily inactive sites consider a range of erosion controls within the broad categories of: flow diversion (*e.g.,* swales); stabilization (*e.g.,* temporary or permanent seeding); and structural controls (*e.g.,* sediment traps, dikes, silt fences).

6.G.6.1.6.3 *Management of Runoff.* (See also Part 4.2.7.2.2.2) Consider the potential pollutant sources given in Part 6.G.6.1.3 when determining reasonable and appropriate measures for managing runoff.

6.G.6.1.6.4 *Capping.* When capping is necessary to minimize pollutant discharges in storm water, identify the source being capped and the material used to construct the cap.

6.G.6.1.6.5 *Treatment.* If treatment of storm water (*e.g.,* chemical or physical systems, oil/water separators, artificial wetlands, etc.) from active and temporarily inactive sites is necessary to protect water quality, describe the type and location of treatment used.

6.G.6.1.6.6 *Certification of Discharge Testing.* (See also Part 4.4.1) Test or evaluate for the presence of specific mining-related non-storm water discharges such as seeps or adit discharges or discharges subject to effluent limitations guidelines (*e.g.,* 40 CFR Part 440), such as mine drainage or process water. Alternatively (if applicable), you may certify in your SWPPP that a particular discharge comprised of commingled storm water and non-storm water is covered under a separate NPDES permit; and that permit subjects the non-storm water portion to effluent limitations prior to any commingling. This certification shall identify the non-storm water discharges, the applicable NPDES permit(s), the effluent limitations placed on the non-storm water discharge by the permit(s), and the points at which the limitations are applied.

6.G.6.2 *SWPPP Requirements for Inactive Metal Mining Facilities.*

6.G.6.2.1 *Nature of Industrial Activities.* (See also Part 4.2.2.1) Briefly describe the mining and associated activities that took place at the site that can potentially affect the storm water discharges covered by this permit. Include: approximate dates of operation; total acreage within the mine and/or processing site; estimate of acres of disturbed earth; activities currently occurring onsite (*e.g.,* reclamation); a general description of site location with respect to transportation routes and communities.

6.G.6.2.2 *Site Map.* (See also Part 4.2.2.3) See Part 6.G.6.1.2 for requirements.

6.G.6.2.3 *Potential Pollutant Sources.* (See also Part 4.2.4) See Part 6.G.6.1.3 for requirements.

6.G.6.2.4 *Controls.* (See also Part 4.2.7) Consider each of the following BMPs. The potential pollutants identified in Part 6.G.6.2.3 shall determine the priority and appropriateness of the BMPs selected. If you determine that one or more of these BMPs are not appropriate for your facility, explain why it is not appropriate. If BMPs are implemented or planned but are not listed here (*e.g.,* substituting a less toxic chemical for a more toxic one), include descriptions of them in your SWPPP. The non-structural controls in the general requirements at Part 4.2.7.2.1 are not required for inactive facilities.

6.G.6.2.4.1 *Storm Water Diversions.* See Part 6.G.6.1.6.2 for requirements.

6.G.6.2.4.2 *Sediment and Erosion Control.* (See also Part 4.2.7.2.2.1) See Part 6.G.6.1.6 for requirements.

6.G.6.2.4.3 *Management of Runoff.* (See also Part 4.2.7.2.2.2)

Also consider the potential pollutant sources as described in Part 6.G.6.2.3 (Summary of Potential Pollutant Sources) when determining reasonable and appropriate measures for managing runoff.

6.G.6.2.4.4 *Capping.* See Part 6.G.6.1.7 for requirements.

6.G.6.2.4.5 *Treatment.* See Part 6.G.6.1.8 for requirements.

6.G.6.2.5 *Comprehensive Site Compliance Evaluation.* (See also Part 4.9)

Annual site compliance evaluations may be impractical for inactive mining sites due to remote location/inaccessibility of the site; in which case conduct the evaluation at least once every 3 years. Document in the SWPPP why annual compliance evaluations are not possible. If the evaluations will be conducted more often than every 3 years, specify the frequency of evaluations.

6.G.7 Monitoring and Reporting Requirements. (See also Part 5)

6.G.7.1 *Analytic Monitoring for Copper Ore Mining and Dressing Facilities.* Active copper ore mining and dressing facilities must sample and analyze storm water discharges for the pollutants listed in Table G–1.

TABLE G–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING FOR COPPER ORE MINING AND DRESSING FACILITIES

Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring cut-off concentration [1]	Numeric limitation
Part of Permit Affected/Supplemental Requirements			
Copper Ore Mining and Dressing Facilities ..... (SIC 1021)	Total Suspended Solids (TSS). Nitrate plus Nitrite Nitrogen Chemical Oxygen Demand (COD).	100 mg/L. 0.68 mg/L. 120 mg/L.	

[1] Monitor once/quarter for the year 2 and year 4 Monitoring Years.

6.G.7.2 *Analytic Monitoring Requirements for Discharges From Waste Rock and Overburden Piles at Active Ore Mining and Dressing Facilities.*For discharges from waste rock and overburden piles, perform analytic monitoring at least once within the first year of permit coverage for the parameters listed in Table G–2, and twice annually thereafter for any parameters measured above the benchmark value (based on the initial sampling event) listed in Table G–2. Permittees must also conduct analytic monitoring twice annually for the parameters listed in Table G–3. The twice annual samples must be collected once between January 1 and June 30 and once between July 1 and December 31, with at least 3 months separating the storm events. The director may, however, notify you that you must perform additional monitoring to accurately characterize the quality and quantity of pollutants discharged from your waste rock/overburden piles. Monitoring requirements for discharges from waste rock and overburden piles are not eligible for the waivers in Part 5.3.2.

TABLE G–2.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING FOR DISCHARGES FROM WASTE ROCK AND OVERBURDEN PILES FROM ACTIVE ORE MINING OR DRESSING FACILITIES

Part of permit affected/supplemental requirements—			
Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring cutoff concentration [1]	Numeric limitation
Iron Ores; Copper Ores; Lead and Zinc Ores; Gold and Silver Ores; Ferroalloy Ores Except Vanadium; Miscellaneous Metal Ores (SIC Codes 1011, 1021, 1031, 1041, 1044, 1061, 1081, 1094, 1099).	Total Suspended Solids (TSS)	100 mg/L.	
	Turbidity (NTUs)	5 NTUs above background.	
	pH	6.0–9.0 standard units.	
	Hardness (as $CaCO_3$)	no benchmark value.	
See above, as applicable	Antimony, Total	0.636 mg/L.	
	Arsenic, Total	0.16854 mg/L.	
	Beryllium, Total	0.13 mg/L.	
	Cadmium, Total (hardness dependent)	0.0159 mg/L.	
	Copper, Total (hardness dependent)	0.0636 mg/L.	
	Iron, Total	1.0 mg/L.	
	Lead, Total (hardness dependent)	0.0816 mg/L.	
	Manganese, Total	1.0 mg/L.	
	Mercury, Total	0.0024 mg/L.	
	Nickel, Total (hardness dependent)	1.417 mg/L.	
	Selenium, Total	0.2385 mg/L.	
	Silver, Total (hardness dependent)	0.318 mg/L.	
	Zinc, Total (hardness dependent)	0.117 mg/L.	

[1] Monitor at least once during the first year of permit coverage, and twice annually thereafter for any parameter that exceeds the benchmark value. Facilities that monitored for the full list of Table G–2 parameters during the previous permit need not sample the entire list again, however they must continue twice annual monitoring for parameters that exceeded the benchmark values in the initial sampling event.

6.G.7.2.1 Additional Analytic Monitoring Requirements for Discharges From Waste Rock and Overburden Piles.

Table G–3 contains additional monitoring requirements for specific ore mine categories. Perform the monitoring twice annually using the schedule established in Part 6.G.7.2. The initial sampling event for a pollutant parameter required in Table G–2 satisfies the requirement for the first sample of any pollutant measurement in Table G–3.

TABLE G–3.—ADDITIONAL MONOTORING REQUIREMENTS FOR DISCHARGES FROM WASTE ROCK AND OVERBURDEN PILES FROM ACTIVE ORE MINING OR DRESSING FACILITIES

Supplemental requirements—			
Type of Ore mined	Pollutants of concern		
	Total suspended solids (TSS)	pH	Metals, total
Tungsten Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Nickel Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Aluminum Ore	X	X	Iron.
Mercury Ore	X	X	Nickel (H).
Iron Ore	X	X	Iron (Dissolved).
Platinum Ore	.....	.....	Cadmium (H), Copper (H), Mercury, Lead (H), Zinc (H).
Titanium Ore	X	X	Iron, Nickel (H), Zinc (H).
Vanadium Ore	X	X	Arsenic, Cadmium (H), Copper (H), Zinc (H).
Copper, Lead, Zinc, Gold, Silver and Molybdenum	X	X	Arsenic, Cadmium (H), Copper (H), Lead, Mercury, Zinc (H).
Uranium, Radium and Vanadium	X	X	Chemical Oxygen Demand, Arsenic, Radium (Dissolved and Total), Uranium, Zinc (H).

Note: (H) indicates that hardness must also be measured when this pollutant is measured.

6.G.7.2.2 *Reporting Requirements Storm Water Discharges From Waste Rock And Overburden Piles From Active Ore Mining or Dressing Facilities.* From active ore mining and dressing facilities, submit monitoring results for each outfall discharging storm water from waste rock and overburden piles, or certifications in accordance with Part 7. Submit monitoring reports on discharge monitoring report (DMR) forms postmarked no later than January 28 of the next year after the samples were collected.

TABLE G–4.—APPLICABILITY OF THE MULTI-SECTOR GENERAL PERMIT TO STORM WATER RUNOFF FROM ACTIVE ORE (METAL) MINING AND DRESSING SITES

Discharge/source of discharge	Note/comment
Piles	
Waste rock/overburden	If composed entirely of storm water and not combining with mine drainage. See Note below.
Topsoil	
Roads constructed of waste rock or spent ore	
Onsite haul roads	If composed entirely of storm water and not combining with mine drainage. See Note below.
Offsite haul/access roads	
Roads not constructed of waste rock or spent ore	
Onsite haul roads	Except if ''mine drainage'' is used for dust control.
Offsite haul/access roads	
Milling/concentrating	
Runoff from tailings dams/dikes when constructed of waste rock/tailings	Except if process fluids are present and only if composed entirely of storm water and not combining with mine drainage. See Note below.
Runoff from tailings dams/dikes when not constructed of waste rock/tailings	Except if process fluids are present.
Concentration building	If storm water only and no contact with piles.
Mill site	If storm water only and no contact with piles.
Ancillary areas	
Office/administrative building and housing	If mixed with storm water from the industrial area.
Chemical storage area	
Docking facility	Except if excessive contact with waste product that would otherwise constitute ''mine drainage''.
Explosive storage	
Fuel storage (oil tanks/coal piles)	
Vehicle/equipment maintenance area/building	
Parking areas	But coverage unnecessary if only employee and visitor-type parking.
Power plant	
Truck wash area	Except when excessive contact with waste product that would otherwise constitute ''mine drainage''.
Reclamation-related areas	
Any disturbed area (unreclaimed)	Only if not in active mining area.
Reclaimed areas released from reclamation bonds prior to Dec. 17 1990.	
Partially/inadequately reclaimed areas or areas not released from reclamation bond.	

Note: Storm water runoff from these sources are subject to the NPDES program for storm water unless mixed with discharges subject to the 40 CFR Part 440 that are not regulated by another permit prior to mixing. Non-storm water discharges from these sources are subject to NPDES permitting and may be subject to the effluent limitation guidelines under 40 CFR Part 440.

Discharges from overburden/waste rock and overburden/waste rock-related areas are not subject to 40 CFR Part 440 unless: (1) it drains naturally (or is intentionally diverted) to a point source; and (2) combines with ''mine drainage'' that is otherwise regulated under the Part 440 regulations. For such sources, coverage under this permit would be available if the discharge composed entirely of storm water does not combine with other sources of mine drainage that are not subject to 40 CFR Part 440, as well as meeting other eligibility criteria contained in Part I.B. of the permit. Permit applicants bear the initial responsibility for determining the applicable technology-based standard for such discharges. EPA recommends that permit applicants contact the relevant NPDES permit issuance authority for assistance to determine the nature and scope of the ''active mining area'' on a mine-by-mine basis, as well as to determine the appropriate permitting mechanism for authorizing such discharges.

6.H Sector H—Coal Mines and Coal Mining Related Facilities

6.H.1 Covered Storm Water Discharges

The requirements in Part 6.H apply to storm water discharges associated with industrial activity from Coal Mines and Coal Mining Related facilities as identified by the SIC Codes specified under Sector H in Table 1–1 of Part 1.2.1.

6.H.2 Industrial Activities Covered by Sector H

Storm water discharges from the following portions of coal mines may be eligible for this permit:

6.H.2.1 Haul roads (nonpublic roads on which coal or coal refuse is conveyed);

6.H.2.2 Access roads (nonpublic roads providing light vehicular traffic within the facility property and to public roadways);

6.H.2.3 Railroad spurs, siding and internal haulage lines (rail lines used for hauling coal within the facility property and to offsite commercial railroad lines or loading areas);

6.H.2.4 Conveyor belts, chutes and aerial tramway haulage areas (areas under and around coal or refuse conveyer areas, including transfer stations); and

6.H.2.5 Equipment storage and maintenance yards, coal handling buildings and structures, and inactive coal mines and related areas (abandoned and other inactive mines, refuse disposal sites and other mining-related areas).

6.H.3 Limitation on Coverage

6.H.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.2.2) Not covered by this permit: discharges from pollutant seeps or underground drainage from inactive coal mines and refuse disposal areas that do not result from precipitation events; and discharges from floor drains in maintenance buildings and other similar drains in mining and preparation plant areas.

6.H.3.2 *Discharges Subject to Storm Water Effluent Guidelines.* (See also Part 1.2.3.4) Not authorized by this permit: storm water discharges subject to an existing effluent limitation guideline at 40 CFR Part 434.

6.H.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4 of the MSGP.

6.H.4.1 *Other Applicable Regulations.* Most active coal mining-related areas (SIC Codes 1221–1241) are subject to sediment and erosion control regulations of the U.S. Office of Surface Mining (OSM) that enforces the Surface Mining Control and Reclamation Act (SMCRA). OSM has granted authority to most coal producing states to implement SMCRA through State SMCRA regulations. All SMCRA requirements regarding control of storm water-related pollutant discharges must be addressed in the SWPPP (directly or by reference).

6.H.4.2 *Drainage Area Site Map.* (See also Part 4.2.2.3) Also identify where any of the following may be exposed to precipitation/surface runoff: all applicable mining related areas described in Part 6.H.2; acidic spoil, refuse or unreclaimed disturbed areas, and liquid storage tanks containing pollutants such as caustics, hydraulic fluids and lubricants.

6.H.4.3 *Potential Pollutant Sources.* (See also Part 4.2.4) Describe the following sources and activities that have potential pollutants associated with them: truck traffic on haul roads and resulting generation of sediment subject to runoff and dust generation; fuel or other liquid storage; pressure lines containing slurry, hydraulic fluid or other potential harmful liquids; and loading or temporary storage of acidic refuse/spoil.

6.H.4.4 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1) As part of your good housekeeping program, consider: using sweepers; covered storage; watering haul roads to minimize dust generation; and conserving vegetation (where possible) to minimize erosion.

6.H.4.5 *Preventive Maintenance.* (See also Part 4.2.7.2.1.3) Also perform inspections of storage tanks and pressure lines of fuels, lubricants, hydraulic fluid or slurry to prevent leaks due to deterioration or faulty connections; or other equivalent measures.

6.H.4.6 *Inspections of Active Mining-Related Areas and Inactive Areas Under SMCRA Bond Authority.* (See also Part 4.2.7.2.1.5) Perform quarterly inspections of areas covered by this permit, corresponding with the inspections, as performed by SMCRA inspectors, of all mining-related areas required by SMCRA. Also maintain the records of the SMCRA authority representative.

6.H.4.7 *Sediment and Erosion Control.* (See also Part 4.2.7.2.2.1) As indicated in Part 6.H.4.1 above, SMCRA requirements regarding sediment and erosion control measures are primary requirements of the SWPPP for mining-related areas subject to SMCRA authority.

6.H.4.8 *Comprehensive Site Compliance Evaluation.* (See also Part 4.9.2) Include in your evaluation program, inspections for pollutants entering the drainage system from activities located on or near coal mining-related areas. Among the areas to be inspected: haul and access roads; railroad spurs, sliding and internal hauling lines; conveyor belts, chutes and aerial tramways; equipment storage and maintenance yards; coal handling buildings/structures; and inactive mines and related areas.

6.H.6 Monitoring and Reporting Requirements. (See also Part 5)

TABLE H–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring cutoff concentration [1]	Numeric limitation
Part of Permit Affected/Supplemental Requirements			
Coal Mines and Related Areas (SIC 1221–1241)	Total Recoverable Aluminum	0.75 mg/L.	
	Total Recoverable Iron	1.0 mg/L.	
	Total Suspended Solids	100 mg/L..	

[1] Monitor once/quarter for the year 2 and year 4 Monitoring Years.

6.I Sector I—Oil and Gas Extraction and Refining

6.I.1 Covered Storm Water Discharges

The requirements in Part 6.I apply to storm water discharges associated with industrial activity from Oil and Gas Extraction and Refining facilities as identified by the SIC Codes specified under Sector I in Table 1–1 of Part 1.2.1.

6.I.2 Industrial Activities Covered By Sector I

The types of activities that permittees under Sector I are primarily engaged in are:

6.I.2.1 Oil and gas exploration, production, processing or treatment operations, or transmission facilities;

6.I.2.2 Extraction and production of crude oil, natural gas, oil sands and shale; the production of hydrocarbon liquids and natural gas from coal; and associated oil field service, supply and repair industries.

6.I.3 Limitations On Coverage

6.I.3.1 *Prohibition of Storm Water Discharges.* This permit does not authorize contaminated storm water discharges from petroleum refining or drilling operations that are subject to nationally established BAT or BPT guidelines found at 40 CFR Parts 419 and 435, respectively. Note: most contaminated discharges at petroleum refining and drilling facilities are subject to these effluent guidelines and are not eligible for coverage by this permit.

6.I.3.2 *Prohibition of Non-Storm Water Discharges.* Not authorized by this permit: discharges of vehicle and equipment washwater, including tank cleaning operations.

Alternatively, washwater discharges must be authorized under a separate NPDES permit, or be discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements.

6.I.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.I.4.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify where any of the following may be exposed to precipitation/surface runoff: Reportable Quantity (RQ) releases; locations used for the treatment, storage or disposal of wastes; processing areas and storage areas; chemical mixing areas; construction and drilling areas; all areas subject to the effluent guidelines requirements for ''No Discharge'' in accordance with 40 CFR 435.32; and the structural controls to achieve compliance with the ''No Discharge'' requirements.

6.I.4.2 *Potential Pollutant Sources.* (See also Part 4.2.4)

Also describe the following sources and activities that have potential pollutants associated with them: chemical, cement, mud or gel mixing activities; drilling or mining activities; and equipment cleaning and rehabilitation activities. In addition, include information about the RQ release that triggered the permit application requirements; the nature of release (*e.g.,* spill of oil from a drum storage area); the amount of oil or hazardous substance released; amount of substance recovered; date of the release; cause of the release (*e.g.,* poor handling techniques and lack of containment in the area); areas affected by the release (i.e., land and water); procedure to clean up release; actions or procedures implemented to prevent or improve response to a release; and remaining potential contamination of storm water from release (taking into account human health risks, the control of drinking water intakes and the designated uses of the receiving water).

6.I.4.3 *Inspections.* (See also Part 4.2.7.2.1.5)

6.I.4.3.1 *Inspection Frequency.* Inspect all equipment and areas addressed in the SWPPP at a minimum of 6-month intervals. Routinely (but not less than quarterly) inspect equipment and vehicles which store, mix (including all on and offsite mixing tanks) or transport chemicals/hazardous materials (including those transporting supplies to oil field activities).

6.I.4.3.2 *Temporarily or Permanently Inactive Oil and Gas Extraction Facilities.* For these facilities that are remotely located and unstaffed, perform the inspections at least annually.

6.I.4.4 *Sediment and Erosion Control.* (See also Part 4.2.7.2.2.1) Unless covered by the General Permit for Construction Activity, the additional sediment and erosion control requirements for well drillings, and sand/shale mining areas include the following:

6.I.4.4.1 *Site Description:* Also include: a description of the nature of the exploration activity; estimates of the total area of site and area disturbed due to exploration activity; an estimate of runoff coefficient of the site; site drainage map, including approximate slopes; and the name of all receiving waters. All sediment and erosion control measures must be inspected once every seven days.

6.I.4.4.2 *Vegetative Controls:* Describe and implement vegetative practices designed to preserve existing vegetation where attainable and re-vegetate open areas as soon as practicable after grade drilling. Consider the following (or equivalent measures): temporary or permanent seeding, mulching, sod stabilization, vegetative buffer strips, tree protection practices. Begin implementing appropriate vegetative practices on all disturbed areas within 14 days following the last activity in that area.

6.I.4.5 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.I.4.5.1 *Vehicle and Equipment Storage Areas.* Confine vehicles/equipment awaiting or having undergone maintenance to designated areas (as marked on site map). Describe and implement measures to minimize contaminants from these areas (*e.g.,* drip pans under equipment, indoor storage, use of berms or dikes, or other equivalent measures).

6.I.4.5.2 *Material and Chemical Storage Areas.* Maintain these areas in good conditions to prevent contamination of storm water. Plainly label all hazardous materials.

6.I.4.5.3 *Chemical Mixing Areas.* (See also Part 4.4)

Describe and implement measures that prevent or minimize contamination of storm water runoff from chemical mixing areas.

6.J Sector J—Mineral Mining and Dressing

6.J.1 Covered Storm Water Discharges

The requirements in Part 6.J apply to storm water discharges associated with industrial activity from active and inactive mineral mining and dressing facilities as identified by the SIC Codes specified under Sector J in Table 1–1 of Part 1.2.1.

6.J.2 Industrial Activities Covered by Sector J

The types of activities that permittees under Sector J are primarily engaged in are:

6.J.2.1 exploring for minerals (*e.g.,* stone, sand, clay, chemical and fertilizer minerals, non-metallic minerals, etc.), developing mines and the mining of minerals; and

6.J.2.2 mineral dressing, and non-metallic mineral services.

6.J.3 Limitations on Coverage

Not authorized by this permit: most storm water discharges subject to an existing effluent limitation guideline at 40 CFR part 436. The exceptions to this limitation and which are therefore covered by the MSGP–2000 are mine

dewatering discharges composed entirely of storm water or ground water seepage from: construction sand and gravel, industrial sand, and crushed stone mining facilities in Regions 1, 2, 3, 6, 8, 9, and 10.

6.J.4 Definitions

6.J.4.1 *Mining Operation*—typically consists of three-phases, any one of which individually qualifies as a ''mining activity.'' The phases are the exploration and construction phase, the active phase and the reclamation phase.

6.J.4.2 *Exploration and Construction Phase*—entails exploration and land disturbance activities to determine the financial viability of a site. Construction includes the building of site access roads and removal of overburden and waste rock to expose mineable minerals.

6.J.4.3 *Active Phase*—activities including each step from extraction through production of a salable product.

6.J.4.4 *Reclamation phase*—activities intended to return the land to its pre-mining state.

Note: The following definitions are not intended to supercede the definitions of active and inactive mining facilities established by 40 CFR 122.26(b)(14)(iii).

6.J.4.5 *Active Mineral Mining Facility*—a place where work or other activity related to the extraction, removal or recovery of minerals is being conducted. This definition does not include any land where grading has returned the earth to a desired contour and reclamation has begun.

6.J.4.6 *Inactive Mineral Mining Facility*—a site or portion of a site where mineral mining and/or dressing occurred in the past but is not an active facility as defined above, and where the inactive portion is not covered by an active permit issued by the applicable State or Federal government agency.

6.J.4.7 *Temporarily Inactive Mineral Mining Facility*—a site or portion of a site where mineral mining and/or dressing occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable State or Federal government agency.

6.J.5 Clearing, Grading and Excavation Activities

Clearing, grading and excavation activities being conducted as part of the exploration and construction phase of a mineral mining operation cannot be covered under this permit if these activities will disturb one or more acre of land. Instead, coverage for these activities must be under the latest version of EPA's General Permit for Storm Water Discharges from Construction Activities (the ''Construction General Permit;'' **Federal Register**, Vol. 63, p. 7858) and, for Region 6, **Federal Register**, Vol. 63, p. 36490), or an individual construction permit. If the area of disturbance during the initial phase is less than one acre, you must continue to comply with the requirements of the MSGP–2000.

6.J.5.1 *Obtaining Coverage Under the Construction General Permit.* If the one-acre limit as described in Part 6.J.5 is attained, coverage for these activities must be under the latest version of EPA's Construction General Permit (or individual permit). You must first obtain and comply with the Construction General Permit's requirements before submitting the separate Construction General Permit Notice of Intent (NOI) form (EPA Form 3510–9). The February 17, 1998 version of the permit can be downloaded from the EPA's Web Site at *http://www.epa.gov/owm/sw/construction/cgp/cgp-nat.pdf* or obtained from the Office of Water Resource Center at (202) 260–7786. The NOI form is also available from the Web Site at *http://www.epa.gov/owm/sw/construction/connoi.pdf* or from your EPA Regional office at the address listed under Part 8.3. Discharges in compliance with the provisions of the Construction General Permit are also authorized under the MSGP.

6.J.5.2 *Cessation of Exploration and Construction Activities.* If exploration phase clearing, grading and excavation activities are completed and no further mining activities will occur at the site, you must comply with the requirements for terminating the Construction General Permit, *i.e.,* stabilize and revegetate the disturbed land, submit a Notice of Termination, etc. If active mining operations will ensue, you must apply for coverage under the MSGP–2000 for your storm water discharges and be prepared to implement any new requirements prior to beginning the active phase. It is recommended you terminate your coverage under the construction general permit, but you are not required to do so. If you choose to not terminate, you will be responsible for complying with all permit conditions of the construction permit in addition to those of the MSGP–2000. The Notice of Termination form is available in Addendum F to this permit and at *http://www.epa.gov/owm/sw/industry/msgp/notform.pdf.*

6.J.6 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4 of the MSGP.

6.J.6.1 *Inspections.* (See also Part 4.2.7.2.1.5) Conduct quarterly visual inspections of all BMPs at active mining facilities. At temporarily or permanently inactive facilities, perform annual inspections. Include in your inspection program: assessment of the integrity of storm water discharge diversions, conveyance systems, sediment control and collection systems and containment structures; inspections to determine if soil erosion has occurred at, or as a result of vegetative BMPs, serrated slopes and benched slopes; inspections of material handling and storage areas and other potential sources of pollution for evidence of actual or potential discharges of contaminated storm water.

6.J.7 Monitoring and Reporting Requirements. (See also Part 5)

TABLE J–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring cut-off concentration [1]	Numeric limitation [2]
Part of Permit Affected/Supplemental Requirements			
Mine Dewatering Activities at Construction Sand and Gravel; Industrial Sand; and Crushed Stone Mining Facilities (SIC 1422–1429, 1442, 1446).	Total Suspended Solids	.....	25 mg/L, monthly avg. 45 mg/L, daily max
	pH		6.0–9.0
Sand and Gravel Mining (SIC 1442, 1446)	Nitrate plus Nitrogen	0.68 mg/L.	
	Total Suspended Solids	100 mg/L.	

TABLE J–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING—Continued

Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring cut-off concentration [1]	Numeric limitation [2]
Dimension and Crushed Stone and Nonmetallic Minerals (except fuels) (SIC 1411, 1422–1429, 1481, 1499).	Total Suspended Solids	100 mg/L.	

[1] Monitor once/quarter for the year 2 and year 4 Monitoring Years.
[2] Monitor once/year for Each Monitoring Year.

6.K Sector K—Hazardous Waste Treatment, Storage or Disposal Facilities

6.K.1 Covered Storm Water Discharges

The requirements in Part 6.K apply to storm water discharges associated with industrial activity from Hazardous Waste Treatment, Storage or Disposal facilities as identified by the Activity Code specified under Sector K in Table 1–1 of Part 1.2.1.

6.K.2 Industrial Activities Covered by Sector K

This permit authorizes storm water discharges associated with industrial activity from facilities that treat, store or dispose of hazardous wastes, including those that are operating under interim status or a permit under subtitle C of RCRA.

6.K.3 Limitations on Coverage

For facilities located in Region 6, coverage is limited to Hazardous Waste Treatment Storage or Disposal Facilities (TSDF's) that are self-generating or handle residential wastes only and to those facilities that only store hazardous wastes and do not treat or dispose. Those permits are issued by EPA Region 6 for Louisiana (LAR05*###), New Mexico (NMR05*###), Oklahoma (OKR05*###), and Federal Indian Reservations in these States (LAR05*##F, NMR05*##F, OKR05*##F, or TXR05*##F). Coverage under this permit is not available to commercial hazardous waste disposal/treatment facilities located in Region 6 that dispose and treat on a commercial basis any produced hazardous wastes (not their own) as a service to generators.

6.K.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.3.1) Not authorized by this permit: leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory-derived wastewater and contact washwater from washing truck and railcar exteriors and surface areas which have come in direct contact with solid waste at the landfill facility.

6.K.4 Definitions

6.K.4.1 *Contaminated storm water*—storm water which comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined in Part 6.K.4.5. Some specific areas of a landfill that may produce contaminated storm water include (but are not limited to): the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas.

6.K.4.2 *Drained free liquids*—aqueous wastes drained from waste containers (*e.g.,* drums, etc.) prior to landfilling.

6.K.4.3 *Land treatment facility*—a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

6.K.4.4 *Landfill*—an area of land or an excavation in which wastes are placed for permanent disposal, that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, a salt bed formation, an underground mine or a cave as these terms are defined in 40 CFR 257.2, 258.2 and 260.10.

6.K.4.5 *Landfill wastewater*—as defined in 40 CFR Part 445 (Landfills Point Source Category) all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated storm water, contaminated groundwater, and wastewater from recovery pumping wells. Landfill wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck, equipment, and railcar exteriors and surface areas which have come in direct contact with solid waste at the landfill facility.

6.K.4.6 *Leachate*—liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

6.K.4.7 *Non-contaminated storm water*—storm water which does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined in Part 6.K.4.5. Non-contaminated storm water includes storm water which flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

6.K.4.8 *Pile*—any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

6.K.4.9 *Surface impoundment*—a facility or part of a facility which is a natural topographic depression, man-made excavation or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons.

6.K.5 Numeric Limitations, Monitoring and Reporting Requirements. (See also Part 5)

TABLE K–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK AND COMPLIANCE MONITORING

Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring cut-off concentration [1]	Numeric limitation [2]
Part of Permit Affected/Supplemental Requirements			
ALL—Industrial Activity Code	Ammonia	19.0 mg/L	
"HZ" (Note: permit coverage limited in some States)	Total Recoverable Magnesium.	0.0636 mg/L	
	Chemical Oxygen Demand (COD).	120.0 mg/L	
	Total Recoverable Arsenic	0.16854 mg/L	
	Total Recoverable Cadmium.	0.0159 mg/L	
	Total Cyanide	0.0636 mg/L	
	Total Recoverable Lead	0.0816 mg/L	
	Total Recoverable Mercury	0.0024 mg/L	
	Total Recoverable Selenium.	0.2385 mg/L	
	Total Recoverable Silver ...	0.0318 mg/L	
ALL—Industrial Activity Code	BOD5	.....	220 mg/l, daily max.
"HZ" Subject to the Provisions of 40 CFR Part 445 Subpart A.			56 mg/l, monthly avg. maximum.
	TSS	.....	88 mg/l, daily max.
			27 mg/l, monthly avg. maximum.
	Ammonia	.....	10 mg/l, daily maximum.
			4.9 mg/l, monthly avg. maximum.
	Alpha Terpineol	.....	0.042 mg/l, daily max.
			0.019 mg/l, monthly avg. maximum.
	Aniline	.....	0.024 mg/l, daily max.
			0.015 mg/l, monthly avg. maximum.
	Benzoic Acid	.....	0.119 mg/l, daily max.
			0.073 mg/l, monthly avg. maximum.
	Naphthalene	.....	0.059 mg/l, daily max.
			0.022 mg/l, monthly avg. maximum.
	p-Cresol	.....	0.024 mg/l, daily max.
			0.015 mg/l, monthly avg. maximum.
	Phenol	.....	0.048 mg/l, daily max.
			0.029 mg/l, monthly avg. maximum.
	Pyridine	.....	0.072 mg/l, daily max.
			0.025 mg/l, monthly avg. maximum.
	Arsenic (Total)	.....	1.1 mg/l, daily maximum.
			0.54 mg/l, monthly avg. maximum.
	Chromium (Total)	.....	1.1 mg/l, daily maximum.
			0.46 mg/l, monthly avg. maximum.
	Zinc (Total)	.....	0.535 mg/l, daily max.
			0.296 mg/l, monthly avg. maximum.
	pH	.....	Within the range of 6–9 pH units.

[1] These benchmark monitoring cutoff concentrations apply to storm water discharges associated with industrial activity other than contaminated storm water discharges from landfills subject to the numeric effluent limitations set forth in Table K–1. Monitor once/quarter for the year 2 and year 4 monitoring years.

[2] As set forth at 40 CFR Part 445 Subpart A, these numeric limitations apply to contaminated storm water discharges from hazardous waste landfills subject to the provisions of RCRA Subtitle C at 40 CFR Parts 264 (Subpart N) and 265 (Subpart N) except for any of the facilities described below:

(a) Landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;

(b) Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

(c) Landfills operated in conjunction with Centralized Waste Treatment (CWT) facilities subject to 40 CFR Part 437 so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or

(d) Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

For the discharges subject to the numeric effluent limitations, monitoring for the specified parameters is required once/year during each year of the term of the permit.

6.L Sector L—Landfills, Land Application Sites and Open Dumps

6.L.1 Covered Storm Water Discharges

The requirements in Part 6.L apply to storm water discharges associated with industrial activity from Landfills and Land Application Sites and Open Dumps as identified by the Activity Codes specified under Sector L in Table 1–1 of Part 1.2.1.

6.L.2 Industrial Activities Covered by Sector L

This permit may authorize storm water discharges for Sector L facilities associated with waste disposal at landfills, land application sites and open dumps that receive or have received industrial waste, including sites subject to regulation under Subtitle D of RCRA.

6.L.3 Limitations on Coverage

6.L.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.3.1)

Not authorized by this permit: leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory wastewater, and contact washwater from washing truck and railcar exteriors and surface areas which have come in direct contact with solid waste at the landfill facility.

6.L.4 Definitions

6.L.4.1 *Contaminated storm water*—storm water which comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater. Some specific areas of a landfill that may produce contaminated storm water include (but are not limited to): the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas.

6.L.4.2 *Drained free liquids*—aqueous wastes drained from waste containers (*e.g.,* drums, etc.) prior to landfilling.

6.L.4.3 *Landfill wastewater*—as defined in 40 CFR Part 445 (Landfills Point Source Category) all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated storm water, contaminated groundwater, and wastewater from recovery pumping wells. Landfill process wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck, equipment and railcar exteriors and surface areas which have come in direct contact with solid waste at the landfill facility.

6.L.4.4 *Leachate*—liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such waste.

6.L.4.5 *Non-contaminated storm water*—storm water which does not come in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater. Non-contaminated storm water includes storm water which flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

6.L.5 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.L.5.1 *Drainage Area Site Map.* (See also Part 4.2.2.3)

Identify where any of the following may be exposed to precipitation/surface runoff: Active and closed landfill cells or trenches, active and closed land application areas, locations where open dumping is occurring or has occurred, locations of any known leachate springs or other areas where uncontrolled leachate may commingle with runoff, leachate collection and handling systems.

6.L.5.2 *Summary of Potential Pollutant Sources.* (See also Part 4.2.4)

Describe the following sources and activities that have potential pollutants associated with them: fertilizer, herbicide and pesticide application; earth/soil moving; waste hauling and loading/unloading; outdoor storage of significant materials including daily, interim and final cover material stockpiles as well as temporary waste storage areas; exposure of active and inactive landfill and land application areas; uncontrolled leachate flows; failure or leaks from leachate collection and treatment systems.

6.L.5.3 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

As part of your good housekeeping program, consider providing protected storage areas for pesticides, herbicides, fertilizer and other significant materials.

6.L.5.4 *Preventative Maintenance Program.* (See also Part 4.2.7.1)

As part of your preventive maintenance program, maintain: all containers used for outdoor chemical/significant materials storage to prevent leaking; all elements of leachate collection and treatment systems to prevent commingling of leachate with storm water; the integrity and effectiveness of any intermediate or final cover (including repairing the cover as necessary to minimize the effects of settlement, sinking and erosion).

6.L.5.5 *Inspections.*

6.L.5.5.1 *Inspections of Active Sites.* (See also Part 4.2.7.2.1.5) Inspect operating landfills, open dumps and land application sites at least once every 7 days. Focus on areas of landfills that have not yet been finally stabilized, active land application areas, areas used for storage of material/wastes that are exposed to precipitation, stabilization and structural control measures, leachate collection and treatment systems, and locations where equipment and waste trucks enter/exit the site. Ensure that sediment and erosion control measures are operating properly. For stabilized sites and areas where land application has been completed, or where the climate is seasonally arid (annual rainfall averages from 0 to 10 inches) or semi-arid (annual rainfall averages from 10 to 20 inches), conduct inspections at least once every month.

6.L.5.5.2 *Inspections of Inactive Sites.* (See also Part 4.2.7.2.1.5) Inspect inactive landfills, open dumps and land application sites at least quarterly. Qualified personnel must inspect landfill (or open dump) stabilization and structural erosion control measures and leachate collection and treatment systems, and all closed land application areas.

6.L.5.6 *Recordkeeping and Internal Reporting.* Implement a tracking system for the types of wastes disposed of in each cell or trench of a landfill or open dump. For land application sites, track

the types and quantities of wastes applied in specific areas.

6.L.5.7 *Non-Storm Water Discharge Test Certification.* (See also Part 4.) The discharge test and certification must also be conducted for the presence of leachate and vehicle washwater.

6.L.5.8 *Sediment and Erosion Control Plan.* (See also Part 4.2.7.2.2.1) Provide temporary stabilization (e.g., consider temporary seeding, mulching and placing geotextiles on the inactive portions of stockpiles): for materials stockpiled for daily, intermediate and final cover; for inactive areas of the landfill or open dump; for any landfill or open dump area that have gotten final covers but where vegetation has yet to established itself; and where waste application has been completed at land application sites but final vegetation has not yet been established.

6.L.5.9 *Comprehensive Site Compliance Evaluation.* (See also Part 4.9.2) Evaluate areas contributing to a storm water discharge associated with industrial activities at landfills, open dumps and land application sites for evidence of, or the potential for, pollutants entering the drainage system.

6.L.6 Numeric Limitations, Monitoring and Reporting Requirements. (See also Part 5)

TABLE L–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK AND COMPLIANCE MONITORING

Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring cut-off concentration [1]	Numeric limitation [2]
Section of Permit Affected/Supplemental Requirements			
All Landfill, Land Application Sites and Open Dumps (Industrial Activity Code ''LF'').	Total Suspended Solids (TSS).	100 mg/L.	
All Landfill, Land Application Sites and Open Dumps, Except Municipal Solid Waste Landfill (MSWLF) Areas Closed in Accordance with 40 CFR 258.60 (Industrial Activity Code ''LF'').	Total Recoverable Iron	1.0mg/L.	
All Landfills Which are Subject to the Requirements of 40 CFR Part 445 Subpart B (Industrial Activity Code ''LF'').	BOD5	.....	140 mg/1, daily max. 37 mg/1, monthly ave maximum
	TSS	.....	88 mg/l, daily max. 27 mg/1, monthly ave maximum.
	Ammonia	.....	10 mg/1, daily max. 4.9 mg/1, monthly ave maximum.
	Alpha Terpineol	.....	0.033 mg/1, daily max. 0.016 mg/1, monthly ave maximum.
	Benzoic Acid	.....	0.12 mg/1, daily max. 0.071 mg/1, monthly ave maximum.
	p-Cresol	.....	0.025 mg/1, daily max. 0.014 mg/1, monthly ave maximum.
	Phenol	.....	0.026 mg/1, daily max. 0.015 mg/1, monthly ave maximum.
	Zinc (Total)	.....	0.20 mg/1, daily max. 0.11 mg/1, monthly ave maximum.
	pH	.....	Within the range of 6–9 pH units.

[1] These benchmark monitoring cutoff concentrations apply to storm water discharges associated with industrial activity other than contaminated storm water discharges from landfills subject to the numeric effluent limitations set forth in Table L–1. Monitor once/quarter for the year 2 and year 4 monitoring years.

[2] As set forth at 40 CFR Part 445 Subpart B, these numeric limitations apply to contaminated storm water discharges from MSWLFs which have not been closed in accordance with 40 CFR 258.60, and contaminated storm water discharges from those landfills which are subject to the provisions of 40 CFR Part 257 except for discharges from any of facilities described in (a) through (d) below:

(a) landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;

(b) landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

(c) landfills operated in conjunction with Centralized Waste Treatment (CWT) facilities subject to 40 CFR Part 437 so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or

(d) landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

For the discharges subject to the numeric effluent limitations, monitoring for the specified parameters is required once/year during each year of the term of the permit.

6.M Sector M—Automobile Salvage Yards

6.M.1 Covered Storm Water Discharges

The requirements in Part 6.M apply to storm water discharges associated with industrial activity from Automobile Salvage Yards as identified by the Activity Code specified under Sector M in Table 1–1 of Part 1.2.1.

6.M.2 Industrial Activities Covered by Sector M

The types of activities that permittees under Sector M are primarily engaged in are dismantling or wrecking used motor vehicles for parts recycling/resale and for scrap.

6.M.3 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.M.3.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Indicate the location of each monitoring point, and estimate the total acreage used for industrial activity including, but not limited to, dismantling, storage and maintenance of used motor vehicle parts. Also identify where any of the following may be exposed to precipitation/surface runoff: Dismantling areas; parts (*e.g.*, engine blocks, tires, hub caps, batteries, hoods, mufflers) storage areas; liquid storage tanks and drums for fuel and other fluids.

6.M.3.2 *Potential Pollutant Sources.* (See also Part 4.2.4) Assess the potential for the following to contribute pollutants to storm water discharges: Vehicle storage areas; dismantling areas; parts storage area (*e.g.*, engine blocks, tires, hub caps, batteries, hoods, mufflers); fueling stations.

6.M.3.3 *Spill and Leak Prevention Procedures.* (See also Part 4.2.7.2.1.4) Drain vehicles intended to be dismantled of all fluids upon arrival at the site (or as soon thereafter as feasible); or employ some other equivalent means to prevent spills/leaks.

6.M.3.4 *Inspections.* (See also Part 4.2.7.2.1.5) Immediately (or as soon thereafter as feasible) inspect vehicles arriving at the site for leaks. Inspect quarterly for signs of leakage, all equipment containing oily parts, hydraulic fluids or any other types of fluids. Also inspect quarterly for signs of leakage, all vessels and areas where fluids are stored, including, but not limited to, brake fluid, transmission fluid, radiator water and antifreeze.

6.M.3.5 *Employee Training.* (See also Part 4.2.7.2.1.6) If applicable to your facility, address the following areas (at a minimum) in your employee training program: Proper handling (collection, storage, and disposal) of oil, used mineral spirits, anti-freeze and solvents.

6.M.3.6 *Management of Runoff.* (See also Part 4.2.7.2.2.2) Consider the following management practices: Berms or drainage ditches on the property line (to help prevent run-on from neighboring properties); berms for uncovered outdoor storage of oily parts, engine blocks and above-ground liquid storage; installation of detention ponds; and the installation of filtering devices and oil/water separators.

6.M.4 Monitoring and Reporting Requirements. (See also Part 5)

TABLE M–1.—SECTOR-SPECIFIC NUMERIC LIMITATIONS AND BENCHMARK MONITORING

Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring cut-off concentration [1]	Numeric limitation
Sector of Permit Affected/Supplemental Requirements			
Automobile Salvage Yards (SIC 5015)	Total Suspended Solids (TSS). Total Recoverable Aluminum. Total Recoverable Iron ..... Total Recoverable Lead	100.0 mg/L. 0.75 mg/L. 1.0 mg/L. 0.0816 mg/L.	

[1] Monitor once/quarter for the year 2 and year 4 monitoring years.

6.N Sector N—Scrap Recycling and Waste Recycling Facilities

6.N.1 Covered Storm Water Discharges

The requirements in Part N apply to storm water discharges associated with industrial activity from Scrap Recycling and Waste Recycling facilities as identified by the SIC Codes specified under Sector N in Table 1–1 of Part 1.2.1.

6.N.2 Industrial Activities Covered by Sector N

The types of activities that permittees under Sector N are primarily engaged in are:

6.N.2.1 processing, reclaiming and wholesale distribution of scrap and waste materials such as ferrous and nonferrous metals, paper, plastic, cardboard, glass, animal hides;

6.N.2.2 reclaiming and recycling liquid wastes such as used oil, antifreeze, mineral spirits and industrial solvents.

6.N.3 Coverage Under This Permit

Separate permit requirements have been established for recycling facilities that only receive source-separated recyclable materials primarily from non-industrial and residential sources (*i.e.*, common consumer products including paper, newspaper, glass, cardboard, plastic containers, aluminum and tin cans). This includes recycling facilities commonly referred to as material recovery facilities (MRF).

6.N.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.2.2) Not covered by this permit: non-storm water discharges from turnings containment areas (see also Part 6.N.5.1.3). Discharges from containment areas in the absence of a storm event are prohibited unless covered by a separate NPDES permit.

6.N.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4 of the MSGP. Part 6.N.4.1 contains a requirement that applies to all recycling facilities and is followed by Parts 6.N.4.2 to 6.N.4.4.4, which have requirements for specific types of

recycling facilities. Implement and describe in your SWPPP a program to address those items that apply. Included are lists of BMP options which, along with any functional equivalents, should be considered for implementation. Selection or deselection of a particular BMP or approach is up to the best professional judgement of the operator, as long as the objective of the requirement is met.

6.N.4.1 *Drainage Area Site Map.* (See also Part 4.2.2.3)

Identify the locations of any of the following activities or sources which may be exposed to precipitation/surface runoff: scrap and waste material storage, outdoor scrap and waste processing equipment, and containment areas for turnings exposed to cutting fluids.

6.N.4.2 *Scrap and Waste Recycling Facilities (Non-Source Separated, Non-Liquid Recyclable Materials).* Requirements for facilities that receive, process and do wholesale distribution of non-liquid recyclable wastes (*e.g.*, ferrous and nonferrous metals, plastics, glass, cardboard and paper). These facilities may receive both non recyclable and recyclable materials. This section is not intended for those facilities that only accept recyclables from primarily non-industrial and residential sources.

6.N.4.2.1 *Inbound Recyclable and Waste Material Control Program.* Minimize the chance of accepting materials that could be significant sources of pollutants by conducting inspections of inbound recyclables and waste materials. BMP options: (a) Provide information/education to suppliers of scrap and recyclable waste materials on draining and properly disposing of residual fluids (*e.g.*, from vehicles and equipment engines, radiators and transmissions, oil filled transformers and individual containers or drums), prior to delivery to your facility; (b) procedures to minimize the potential of any residual fluids from coming into contact with precipitation/runoff; (c) procedures for accepting scrap lead-acid batteries (additional requirements for the handling, storage and disposal or recycling of batteries are contained in the scrap lead-acid battery program provisions in N.5.1.6); (d) training targeted for those personnel engaged in the inspection and acceptance of inbound recyclable materials. In addition, (e) liquid wastes, including used oil, must be stored in materially compatible and non-leaking containers and disposed or recycled in accordance with RCRA.

6.N.4.2.2 *Scrap and Waste Material Stockpiles/Storage (Outdoor).* Minimize contact of storm water runoff with stockpiled materials, processed materials and non-recyclable wastes. BMP options: (a) Permanent or semi-permanent covers; (b) to facilitate settling or filtering of pollutants: sediment traps, vegetated swales and strips, catch basin filters and sand filters; (c) divert runoff away from storage areas via dikes, berms, containment trenches, culverts and surface grading; (d) silt fencing; (e) oil/water separators, sumps and dry absorbents for areas where potential sources of residual fluids are stockpiled (*e.g.*, automobile engine storage areas).

6.N.4.2.3 *Stockpiling of Turnings Exposed to Cutting Fluids (Outdoor).* Minimize contact of surface runoff with residual cutting fluids. BMP options (use singularly or in combination): (a) Store all turnings exposed to cutting fluids under some form of permanent or semi-permanent cover. Storm water discharges from these areas are permitted provided the runoff is first treated by an oil/water separator or its equivalent. Identify procedures to collect, handle and dispose/recycle residual fluids which may be present; (b) establish dedicated containment areas for all turnings that have been exposed to cutting fluids. Storm water runoff from these areas can be discharged provided: The containment areas are constructed of either concrete, asphalt or other equivalent types of impermeable material; there is a barrier around the perimeter of the containment areas (*e.g.*, berms, curbing, elevated pads, etc.) to prevent contact with storm water run-on; there is a drainage collection system for runoff generated from containment areas; you have a schedule to maintain the oil/water separator (or its equivalent); and you identify procedures for properly disposing or recycling collected residual fluids.

6.N.4.2.4 *Scrap and Waste Material Stockpiles/Storage (Covered or Indoor Storage).* Minimize contact of residual liquids and particulate matter from materials stored indoors or under cover with surface runoff. BMP options: (a) Good housekeeping measures including the use of dry absorbent or wet vacuuming to contain or dispose/recycle residual liquids originating from recyclable containers; (b) not allowing washwater from tipping floors or other processing areas to discharge to the storm sewer system; (c) disconnect or seal off all floor drains connected to the storm sewer system.

6.N.4.2.5 *Scrap and Recyclable Waste Processing Areas.* Minimize surface runoff from coming in contact with scrap processing equipment. Pay attention to operations that generate visible amounts of particulate residue (*e.g.*, shredding) to minimize the contact of accumulated particulate matter and residual fluids with runoff (*i.e.*, through good housekeeping, preventive maintenance, etc.). BMP options: (a) Regularly inspect equipment for spills/leaks, and malfunctioning/worn/corroded parts or equipment; (b) a preventive maintenance program for processing equipment; (c) use of dry-absorbents or other cleanup practices to collect and dispose/recycle spilled/leaking fluids; (e) on unattended hydraulic reservoirs over 150 gallons in capacity, install such protection devices as low-level alarms or other equivalent devices, or, alternatively, secondary containment that can hold the entire volume of the reservoir; (f) containment or diversion structures such as dikes, berms, culverts, trenches, elevated concrete pads, grading to minimize contact of storm water runoff with outdoor processing equipment or stored materials; (g) oil/water separators or sumps; (h) permanent or semi-permanent covers in processing areas where there are residual fluids and grease; (i) retention/detention ponds or basins; sediment traps, vegetated swales or strips (for pollutant settling/filtration); (j) catch basin filters or sand filters.

6.N.4.2.6 *Scrap Lead-Acid Battery Program.* Properly handle, store and dispose of scrap lead-acid batteries. BMP options: (a) Segregate scrap lead-acid batteries from other scrap materials; (b) proper handling, storage and disposal of cracked or broken batteries; (c) collect and dispose leaking lead-acid battery fluid; (d) minimize/eliminate (if possible) exposure of scrap lead-acid batteries to precipitation or runoff; (e) employee training for the management of scrap batteries.

6.N.4.2.7 *Spill Prevention and Response Procedures.* (See also Part 4.2.7.2.1.4) Minimize storm water contamination at loading/unloading areas, and from equipment or container failures. BMP options: (a) Prevention and response measures for areas that are potential sources of fluid leaks/spills; (b) immediate containment and clean up of spills/leaks. If malfunctioning equipment is responsible for the spill/leak, repairs should also be conducted as soon as possible; (c) cleanup measures including the use of dry absorbents. If this method is employed, there should be an adequate supply of dry absorbent materials kept onsite and used absorbent must be properly disposed of; (d) store drums containing liquids—especially oil and lubricants—either: Indoors, in a bermed area, in overpack containers or spill pallets, or

in other containment devices; (e) install overfill prevention devices on fuel pumps or tanks; (f) place drip pans or equivalent measures under leaking stationary equipment until the leak is repaired. The drip pans should be inspected for leaks and potential overflow and all liquids must be properly disposed of (as per RCRA); (g) install alarms and/or pump shut off systems on outdoor equipment with hydraulic reservoirs exceeding 150 gallons in the event of a line break. Alternatively, a secondary containment system capable of holding the entire contents of the reservoir plus room for precipitation can be used.

6.N.4.2.8 *Quarterly Inspection Program.* (See also Part 4.2.7.2.1.5) Inspect all designated areas of the facility and equipment identified in the plan quarterly.

6.N.4.2.9 *Supplier Notification Program.* As appropriate, notify major suppliers which scrap materials will not be accepted at the facility or are only accepted under certain conditions.

6.N.4.3 *Waste Recycling Facilities (Liquid Recyclable Materials).*

6.N.4.3.1 *Waste Material Storage (Indoor).* Minimize/eliminate contact between residual liquids from waste materials stored indoors and surface runoff. The plan may refer to applicable portions of other existing plans such as SPCC plans required under 40 CFR Part 112. BMP options: (a) procedures for material handling (including labeling and marking); (b) clean up spills/leaks with dry-absorbent materials or a wet vacuum system; (c) appropriate containment structures (trenching, curbing, gutters, etc.); (d) a drainage system, including appurtenances (*e.g.*, pumps or ejectors, manually operated valves), to handle discharges from diked or bermed areas. Drainage should be discharged to an appropriate treatment facility, sanitary sewer system, or otherwise disposed of properly. These discharges may require coverage under a separate NPDES wastewater permit or industrial user permit under the pretreatment program.

6.N.4.3.2 *Waste Material Storage (Outdoor).* Minimize contact between stored residual liquids and precipitation or runoff. The plan may refer to applicable portions of other existing plans such as SPCC plans required under 40 CFR Part 112. Discharges of precipitation from containment areas containing used oil must also be in accordance with applicable sections of 40 CFR Part 112. BMP options: (a) appropriate containment structures (*e.g.*, dikes, berms, curbing, pits) to store the volume of the largest tank with sufficient extra capacity for precipitation; (b) drainage control and other diversionary structures; (c) for storage tanks, provide corrosion protection and/or leak detection systems; (d) use dry-absorbent materials or a wet vacuum system to collect spills.

6.N.4.3.3 *Trucks and Rail Car Waste Transfer Areas.* Minimize pollutants in discharges from truck and rail car loading/unloading areas. Include measures to clean up minor spills/leaks resulting from the transfer of liquid wastes. BMP options: (a) containment and diversionary structures to minimize contact with precipitation or runoff; (b) use dry-clean up methods, wet vacuuming, roof coverings, or runoff controls.

6.N.4.3.4 *Quarterly Inspections.* (See also Part 4.2.7.2.1.5) At a minimum, the inspections must also include all areas where waste is generated, received, stored, treated or disposed and that are exposed to either precipitation or storm water runoff.

6.N.4.4 *Recycling Facilities (Source Separated Materials).* The following identifies considerations for facilities that receive only source-separated recyclables, primarily from non-industrial and residential sources.

6.N.4.4.1 *Inbound Recyclable Material Control.* Minimize the chance of accepting non-recyclables (*e.g.*, hazardous materials) which could be a significant source of pollutants by conducting inspections of inbound materials. BMP options: (a) information/education measures to inform suppliers of recyclables which materials are acceptable and which are not; (b) training drivers responsible for pickup of recycled material; (c) clearly marking public drop-off containers regarding which materials can be accepted; (d) reject non-recyclable wastes or household hazardous wastes at the source; (e) procedures for handling and disposal of non-recyclable material.

6.N.4.4.2 *Outdoor Storage.* Minimize exposure of recyclables to precipitation and runoff. Use good housekeeping measures to prevent accumulation of particulate matter and fluids, particularly in high traffic areas. Other BMP options: (a) provide totally-enclosed drop-off containers for the public; (b) install a sump/pump with each container pit and treat or discharge collected fluids to a sanitary sewer system; (c) provide dikes and curbs for secondary containment (*e.g.*, around bales of recyclable waste paper); (d) divert surface water runoff away from outside material storage areas; (e) provide covers over containment bins, dumpsters, roll-off boxes; (f) store the equivalent one days's volume of recyclable material indoors.

6.N.4.4.3 *Indoor Storage and Material Processing.* Minimize the release of pollutants from indoor storage and processing areas. BMP options: (a) schedule routine good housekeeping measures for all storage and processing areas; (b) prohibit tipping floor washwater from draining to the storm sewer system; (c) provide employee training on pollution prevention practices.

6.N.4.4.4 *Vehicle and Equipment Maintenance.* BMP options for those areas where vehicle and equipment maintenance are occurring outdoors: (a) prohibit vehicle and equipment washwater from discharging to the storm sewer system; (b) minimize or eliminate outdoor maintenance areas whenever possible; (c) establish spill prevention and clean-up procedures in fueling areas; (d) avoid topping off fuel tanks; (e) divert runoff from fueling areas; (f) store lubricants and hydraulic fluids indoors; (g) provide employee training on proper handling, storage of hydraulic fluids and lubricants.

6.N.5 Monitoring and Reporting Requirements. (See also Part 5)

TABLE N–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring cut-off concentration[1]	Numeric limitation
Part of Permit Affected/Supplemental Requirements			
Scrap Recycling Facility (SIC 5093)	Chemical Oxygen Demand (COD). Total Suspended Solids (TSS). Total Recoverable Aluminum. Total Recoverable Copper Total Recoverable Iron ..... Total Recoverable Lead .... Total Recoverable Zinc	120 mg/L. 100 mg/L. 0.75 mg/L. 0.0636 mg/L. 1.0 mg/L. 0.0816 mg/L. 0.117 mg/L.	

[1] Monitor once/quarter for the year 2 and year 4 Monitoring Years.

6.O Sector O—Steam Electric Generating Facilities

6.O.1 Covered Storm Water Discharges

The requirements in Part 6.O apply to storm water discharges associated with industrial activity from Steam Electric Power Generating Facilities as identified by the Activity Code specified under Sector O in Table 1–1 of Part 1.2.1.

6.O.2 Industrial Activities Covered by Sector O

This permit authorizes storm water discharges from the following industrial activities at Sector O facilities:

6.O.2.1 Steam electric power generation using coal, natural gas, oil, nuclear energy, etc. to produce a steam source, including coal handling areas;

6.O.2.2 Coal pile runoff, including effluent limitations established by 40 CFR Part 423;

6.O.2.3 Dual fuel co-generation facilities.

6.O.3 Limitations on Coverage

6.O.3.1 *Prohibition of Non-Storm Water Discharges.* Not covered by this permit: non-storm water discharges subject to effluent limitations guidelines.

6.O.3.2 *Prohibition of Storm Water Discharges.* Not covered by this permit: storm water discharges from ancillary facilities (*e.g.,* fleet centers, gas turbine stations and substations) that are not contiguous to a stream electric power generating facility; and heat capture co-generation facilities.

6.O.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.O.4.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify the locations of any of the following activities or sources which may be exposed to precipitation / surface runoff: storage tanks, scrap yards, general refuse areas; short and long term storage of general materials (including but not limited to: supplies, construction materials, paint equipment, oils, fuels, used and unused solvents, cleaning materials, paint, water treatment chemicals, fertilizer and pesticides); landfills, construction sites; stock piles areas (*e.g.,* coal or limestone piles).

6.O.4.2 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.O.4.2.1 *Fugitive Dust Emissions.* Describe and implement measures that prevent or minimize fugitive dust emissions from coal handling areas. Consider such procedures to minimize the tracking of coal dust offsite as installing specially designed tires, or washing vehicles in a designated area before they leave the site and controlling the wash water.

6.O.4.2.2 *Delivery Vehicles.* Describe and implement measures that prevent or minimize contamination of storm water runoff from delivery vehicles arriving at the plant site. Consider the following: procedures to inspect delivery vehicles arriving at the plant site and ensure overall integrity of the body or container; and procedures to deal with leakage / spillage from vehicles or containers.

6.O.4.2.3 *Fuel Oil Unloading Areas.* Describe and implement measures that prevent or minimize contamination of precipitation / surface runoff from fuel oil unloading areas. Consider, at a minimum (or their equivalents): using containment curbs in unloading areas; having personnel familiar with spill prevention and response procedures present during deliveries to ensure that any leaks / spills are immediately contained and cleaned up; using spill and overflow protection (*e.g.,* drip pans, drip diapers or other containment devices placed beneath fuel oil connectors to contain potential spillage during deliveries or from leaks at the connectors).

6.O.4.2.4 *Chemical Loading / Unloading.* Describe and implement measures that prevent or minimize contamination of precipitation / surface runoff from chemical loading / unloading areas. Consider, at a minimum (or their equivalents): using containment curbs at chemical loading / unloading areas to contain spill; having personnel familiar with spill prevention and response procedures present during deliveries to ensure that any leaks / spills are immediately contained and cleaned up; and load / unload in covered areas and store chemicals indoors.

6.O.4.2.5 *Miscellaneous Loading / Unloading Areas.* Describe and implement measures that prevent or minimize contamination of precipitation / surface runoff from loading / unloading areas. Consider, at a minimum (or their equivalents): covering the loading area; grading, berming, or curbing around the loading area to divert run-on; or locating the loading / unloading equipment and vehicles so leaks are contained in existing containment and flow diversion systems.

6.O.4.2.6 *Liquid Storage Tanks.* Describe and implement measures that prevent or minimize contamination of surface runoff from above ground liquid storage tanks. Consider using, at a minimum (or their equivalents): protective guards around tank; containment curbs; spill and overflow protection; and dry cleanup methods.

6.O.4.2.7 *Large Bulk Fuel Storage Tanks.* Describe and implement measures that prevent or minimize contamination of surface runoff from large bulk fuel storage tanks. Consider,

at a minimum, using containment berms (or its equivalent). You must also comply with applicable State and Federal laws, including Spill Prevention Control and Countermeasures (SPCC).

6.O.4.2.8 *Spill Reduction Measures.* Describe and implement measures to reduce the potential for an oil / chemical spill or reference the appropriate Part of your SPCC plan. At a minimum, visually inspect on a weekly basis, the structural integrity of all above ground tanks, pipelines, pumps and other related equipment, and effect any necessary repairs immediately.

6.O.4.2.9 *Oil Bearing Equipment in Switchyards.* Describe and implement measures that prevent or minimize contamination of surface runoff from oil bearing equipment in switchyard areas. Consider using level grades and gravel surfaces to retard flows and limit the spread of spills or collecting runoff in perimeter ditches.

6.O.4.2.10 *Residue Hauling Vehicles.* Inspect all residue hauling vehicles for proper covering over the load, adequate gate sealing and overall integrity of the container body. Repair as soon as practicable, vehicles without load covering or adequate gate sealing, or with leaking containers or beds.

6.O.4.2.11 *Ash Loading Areas.* Describe and implement procedures to reduce or control the tracking of ash/ residue from ash loading areas. Where practicable, clear the ash building floor and immediately adjacent roadways of spillage, debris and excess water before departure of each loaded vehicle.

6.O.4.2.12 *Areas Adjacent to Disposal Ponds or Landfills.* Describe and implement measures that prevent or minimize contamination of surface runoff from areas adjacent to disposal ponds or landfills. Develop procedures to reduce ash residue that may be tracked on to access roads traveled by residue handling vehicles, and reduce ash residue on exit roads leading into and out of residue handling areas.

6.O.4.2.13 *Landfills, Scrap Yards, Surface Impoundments, Open Dumps, General Refuse Sites.*

Address these areas in your SWPPP and include appropriate BMPs as referred to in Part 4.

6.O.4.2.14 *Vehicle Maintenance Activities.* For vehicle maintenance activities performed on the plant site, use the applicable BMPs outlined in Part 6.P.

6.O.4.2.15 *Material Storage Areas.* Describe and implement measures that prevent or minimize contamination of storm water runoff from material storage areas (including areas used for temporary storage of miscellaneous products and construction materials stored in lay-down areas). Consider using (or their equivalents): Flat yard grades; collecting runoff in graded swales or ditches; erosion protection measures at steep outfall sites (*e.g.*, concrete chutes, riprap, stilling basins); covering lay-down areas; storing materials indoors; and covering materials temporarily with polyethylene, polyurethane, polypropylene or hypalon. Storm water run-on may be minimized by constructing an enclosure or building a berm around the area.

6.O.4.3 *Comprehensive Site Compliance Evaluation.* (See also Part 4.9.3) As part of your evaluation, inspect the following areas on a monthly basis: Coal handling areas, loading/unloading areas, switchyards, fueling areas, bulk storage areas, ash handling areas, areas adjacent to disposal ponds and landfills, maintenance areas, liquid storage tanks, and long term and short term material storage areas.

6.O.5 Monitoring and Reporting Requirements. (See also Part 5)

TABLE O–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring cut-off concentration [1]	Numeric Limitation [2]
Part of Permit Affected/Supplemental Requirements			
Steam Electric Generating Facilities (Industrial Activity Code ''SE'').	Total Recoverable Iron	1.0 mg/L.	

[1] Monitor once/quarter for the year 2 and year 4 Monitoring Years.

[2] Note that the numeric effluent limitation guidelines for coal pile runoff at steam electric generating facilities have been adopted as a standard numeric limits for all coal pile runoff. See Part 5.1.3.

6.P Sector P—Land Transportation and Warehousing

6.P.1 Covered Storm Water Discharges

The requirements in Part 6.P apply to storm water discharges associated with industrial activity from Land Transportation and Warehousing facilities as identified by the Activity Code specified under Sector P in Table 1–1 of Part 1.2.1.

6.P.2 Industrial Activities Covered by Sector P

The types of activities that permittees under Sector P are primarily engaged in are:

6.P.2.1 vehicle and equipment maintenance (vehicle and equipment rehabilitation, mechanical repairs, painting, fueling and lubrication);

6.P.2.2 equipment cleaning.

6.P.3 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.P.3.1 *Drainage Site Map.* (See also Part 4.2.2.3) Identify the locations of any of the following activities or sources: Fueling stations; vehicle/equipment maintenance or cleaning areas; storage areas for vehicle/equipment with actual or potential fluid leaks; loading/ unloading areas; areas where treatment, storage or disposal of wastes occur; liquid storage tanks; processing areas; storage areas; and all monitoring areas.

6.P.3.2 *Potential Pollutant Sources.* (See also Part 4.2.4) Describe and assess the potential for the following to contribute pollutants to storm water discharges: Onsite waste storage or disposal; dirt/gravel parking areas for vehicles awaiting maintenance; and fueling areas.

6.P.3.3 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.P.3.3.1 *Vehicle and Equipment Storage Areas.* Confine the storage of leaky or leak-prone vehicles/equipment awaiting maintenance to designated areas. Consider the following (or other equivalent measures): The use of drip pans under vehicles/equipment, indoor storage of vehicles and equipment, installation of berms or dikes, use of absorbents, roofing or covering storage areas, and cleaning pavement surfaces to remove oil and grease.

6.P.3.3.2 *Fueling Areas.* Implement and describe measures that prevent or

minimize contamination of storm water runoff from fueling areas. Consider the following (or other equivalent measures): Covering the fueling area; using spill/overflow protection and cleanup equipment; minimizing storm water runon/runoff to the fueling area; using dry cleanup methods; and treating and/or recycling collected storm water runoff.

6.P.3.3.3 *Material Storage Areas.* Maintain all material storage vessels (*e.g.*, for used oil/oil filters, spent solvents, paint wastes, hydraulic fluids) to prevent contamination of storm water and plainly label them (*e.g.*, ''Used Oil,'' ''Spent Solvents,'' etc.). Consider the following (or other equivalent measures): storing the materials indoors; installing berms/dikes around the areas; minimizing runoff of storm water to the areas; using dry cleanup methods; and treating and/or recycling collected storm water runoff.

6.P.3.3.4 *Vehicle and Equipment Cleaning Areas.* Implement and describe measures that prevent or minimize contamination of storm water runoff from all areas used for vehicle/equipment cleaning. Consider the following (or other equivalent measures): performing all cleaning operations indoors; covering the cleaning operation, ensuring that all washwater drains to a proper collection system (*i.e.*, not the storm water drainage system unless NPDES permitted); treating and/or recycling collected storm water runoff, or other equivalent measures. Note: the discharge of vehicle/equipment washwater, including tank cleaning operations, are not authorized by this permit and must be covered under a separate NPDES permit or discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements.

6.P.3.3.5 *Vehicle and Equipment Maintenance Areas.* Implement and describe measures that prevent or minimize contamination of storm water runoff from all areas used for vehicle/equipment maintenance. Consider the following (or other equivalent measures): performing maintenance activities indoors; using drip pans; keeping an organized inventory of materials used in the shop; draining all parts of fluid prior to disposal; prohibiting wet clean up practices if these practices would result in the discharge of pollutants to storm water drainage systems; using dry cleanup methods; treating and/or recycling collected storm water runoff, minimizing run on/runoff of storm water to maintenance areas.

6.P.3.3.6 *Locomotive Sanding (Loading Sand for Traction) Areas.* Consider the following (or other equivalent measures): covering sanding areas; minimizing storm water run on/runoff; or appropriate sediment removal practices to minimize the offsite transport of sanding material by storm water.

6.P.3.4 *Inspections.* (See also Part 4.2.7.2.1.5) Inspect all the following areas/activities: storage areas for vehicles/equipment awaiting maintenance, fueling areas, indoor and outdoor vehicle/equipment maintenance areas, material storage areas, vehicle/equipment cleaning areas and loading/unloading areas.

6.P.3.5 *Employee Training.* (See also Part 4.2.7.2.1.6) Train personnel at least once a year and address the following, as applicable: used oil and spent solvent management; fueling procedures; general good housekeeping practices; proper painting procedures; and used battery management.

6.P.3.6 *Vehicle and Equipment Washwater Requirements.* (See also Part 4.4) Attach to or reference in your SWPPP, a copy of the NPDES permit issued for vehicle/equipment washwater or, if an NPDES permit has not been issued, a copy of the pending application. If an industrial user permit is issued under a pretreatment program, attach a copy to your SWPPP. In any case, address all non-storm water permit conditions or pretreatment conditions in your SWPPP. If washwater is handled in another manner (*e.g.*, hauled offsite), describe the disposal method and attach all pertinent documentation/information (*e.g.*, frequency, volume, destination, etc.) in the plan.

6.Q Sector Q—Water Transportation

6.Q.1 Covered Storm Water Discharges

The requirements in Part 6.Q apply to storm water discharges associated with industrial activity from Water Transportation facilities as identified by the Activity Code specified under Sector Q in Table 1–1 of Part 1.2.1.

6.Q.2 Industrial Activities Covered by Sector Q

The requirements listed under this Part apply to storm water discharges associated with the following activities:

6.Q.2.1 Water transportation facilities classified in SIC Code major group 44 that have vehicle (vessel) maintenance shops and/or equipment cleaning operations including:

6.Q.2.1.1 Water transportation industry includes facilities engaged in foreign or domestic transport of freight or passengers in deep sea or inland waters;

6.Q.2.1.2 Marine cargo handling operations;

6.Q.2.1.3 Ferry operations;

6.Q.2.1.4 Towing and tugboat services;

6.Q.2.1.5 Marinas.

6.Q.3 Limitations on Coverage

6.Q.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.3.1) Not covered by this permit: bilge and ballast water, sanitary wastes, pressure wash water and cooling water originating from vessels.

6.Q.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.Q.4.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify where any of the following may be exposed to precipitation/surface runoff: fueling; engine maintenance/repair; vessel maintenance/repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading/unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; liquid storage areas (*e.g.*, paint, solvents, resins); and material storage areas (*e.g.*, blasting media, aluminum, steel, scrap iron).

6.Q.4.2 *Summary of Potential Pollutant Sources.* (See also Part 4.2.4) Describe the following additional sources and activities that have potential pollutants associated with them: outdoor manufacturing or processing activities (*i.e.*, welding, metal fabricating); and significant dust or particulate generating processes (*e.g.*, abrasive blasting, sanding, painting).

6.Q.4.3 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.Q.4.3.1 *Pressure Washing Area.* If pressure washing is used to remove marine growth from vessels, the discharge water must be permitted by a separate NPDES permit. Describe in the SWPPP: the measures to collect or contain the discharges from the pressures washing area; the method for the removal of the visible solids; the methods of disposal of the collected solids; and where the discharge will be released.

6.Q.4.3.2 *Blasting and Painting Area.* Implement and describe measures to prevent spent abrasives, paint chips and over spray from discharging into the receiving water or the storm sewer systems. Consider containing all blasting/painting activities or use other measures to prevent or minimize the discharge the contaminants (*e.g.*,

hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris). Where necessary, regularly clean storm water conveyances of deposits of abrasive blasting debris and paint chips. Detail in the SWPPP any standard operating practices relating to blasting/painting (*e.g.*, prohibiting uncontained blasting/painting over open water, or prohibiting blasting/painting during windy conditions which can render containment ineffective).

6.Q.4.3.3 *Material Storage Areas.* Store and plainly label all containerized materials (*e.g.*, fuels, paints, solvents, waste oil, antifreeze, batteries) in a protected, secure location away from drains. Implement and describe measures to prevent or minimize the contamination of precipitation/surface runoff from the storage areas. Specify which materials are stored indoors and consider containment or enclosure for those stored outdoors. If abrasive blasting is performed, discus the storage and disposal of spent abrasive materials generated at the facility. Consider implementing an inventory control plan to limit the presence of potentially hazardous materials onsite.

6.Q.4.3.4 *Engine Maintenance and Repair Areas.* Implement and describe measures to prevent or minimize the contamination of precipitation/surface runoff from all areas used for engine maintenance and repair. Consider the following (or their equivalents): performing all maintenance activities indoors; maintaining an organized inventory of materials used in the shop; draining all parts of fluid prior to disposal; prohibiting the practice of hosing down the shop floor; using dry cleanup methods; and treating and/or recycling storm water runoff collected from the maintenance area.

6.Q.4.3.5 *Material Handling Area.* Implement and describe measures to prevent or minimize the contamination of precipitation/surface runoff from material handling operations and areas (*e.g.*, fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). Consider the following (or their equivalents): covering fueling areas; using spill/overflow protection; mixing paints and solvents in a designated area (preferably indoors or under a shed); and minimize runoff of storm water to material handling areas.

6.Q.4.3.6 *Drydock Activities.* Describe your procedures for routinely maintaining/cleaning the drydock to prevent or minimize pollutants in storm water runoff. Address the cleaning of accessible areas of the drydock prior to flooding, and final cleanup following removal of the vessel and raising the dock. Include procedures for cleaning up oil, grease or fuel spills occurring on the drydock. Consider the following (or their equivalents): sweeping rather than hosing off debris/spent blasting material from accessible areas of the drydock prior to flooding, and having absorbent materials and oil containment booms readily available to contain/cleanup any spills.

6.Q.4.3.7 *General Yard Area.* Implement and describe a schedule for routine yard maintenance and cleanup. Regularly remove from the general yard area: scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial scrap, insulation, welding rods, packaging, etc.

6.Q.4.4 *Preventative Maintenance.* (See also Part 4.2.7.2.1.4) As part of your preventive maintenance program, perform timely inspection and maintenance of storm water management devices (*e.g.*, cleaning oil/water separators and sediment traps to ensure that spent abrasives, paint chips and solids will be intercepted and retained prior to entering the storm drainage system) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

6.Q.4.5 *Inspections.* (See also Part 4.2.7.2.1.5) Include the following areas in all monthly inspections: pressure washing area; blasting, sanding and painting areas; material storage areas; engine maintenance/repair areas; material handling areas; drydock area; and general yard area.

6.Q.4.6 *Employee Training.* (See also Part 4.2.7.2.1.6) As part of your employee training program, address, at a minimum, the following activities (as applicable): used oil management; spent solvent management; disposal of spent abrasives; disposal of vessel wastewaters; spill prevention and control; fueling procedures; general good housekeeping practices; painting and blasting procedures; and used battery management.

6.Q.4.7 *Comprehensive Site Compliance Evaluation.* (See also Part 4.9) Conduct regularly scheduled evaluations at least once a year and address those areas contributing to a storm water discharge associated with industrial activity (*e.g.*, pressure washing area, blasting/sanding areas, painting areas, material storage areas, engine maintenance/repair areas, material handling areas, and drydock area). Inspect these sources for evidence of, or the potential for, pollutants entering the drainage system.

6.Q.5 Monitoring and Reporting Requirements. (See also Part 5)

TABLE Q–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring cut-off concentration [1]	Numeric limitation
Part of Permit Affected/Supplemental Requirements			
Water Transportation Facilities (SIC 4412–4499)	Total Recoverable Aluminum..	0.75 mg/L	
		1.0 mg/L	
	Total Recoverable Iron.	0.0816 mg/L	
	Total Recoverable Lead. ...	0.117 mg/L	
	Total Recoverable Zinc.		

[1] Monitor once/quarter for the year 2 and year 4 Monitoring Years.

6.R Sector R—Ship and Boat Building or Repair Yards

6.R.1 Covered Storm Water Discharges

The requirements in Part 6.R apply to storm water discharges associated with industrial activity from Ship and Boat Building or Repair Yards as identified by the Activity Codes specified under Sector R in Table 1–1 of Part 1.2.1.

6.R.2 Industrial Activities Covered by Sector R

The types of activities that permittees under Sector R are primarily engaged in are:

6.R.2.1 Ship building and repairing and boat building and repairing [3]

6.R.3 Limitations on Coverage

6.R.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.3.1) Not covered by this permit: discharges containing bilge and ballast water, sanitary wastes, pressure wash water and cooling water originating from vessels.

6.R.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.R.4.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify where any of the following may be exposed to precipitation/surface runoff: fueling; engine maintenance/repair; vessel maintenance/repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading/unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; liquid storage areas (*e.g.*, paint, solvents, resins); and material storage areas (*e.g.*, blasting media, aluminum, steel, scrap iron).

6.R.4.2 *Potential Pollutant Sources.* (See also Part 4.2.4) Describe the following additional sources and activities that have potential pollutants associated with them (if applicable): outdoor manufacturing/processing activities (*e.g.*, welding, metal fabricating); and significant dust/particulate generating processes (*e.g.*, abrasive blasting, sanding, painting).

6.R.4.3 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.R.4.3.1 *Pressure Washing Area.* If pressure washing is used to remove marine growth from vessels, the discharge water must be permitted as a process wastewater by a separate NPDES permit.

6.R.4.3.2 *Blasting and Painting Area.* Implement and describe measures to prevent spent abrasives, paint chips and over spray from discharging into the receiving water or the storm sewer systems. Consider containing all blasting/painting activities or use other measures to prevent the discharge of the contaminants (*e.g.*, hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris). Where necessary, regularly clean storm water conveyances of deposits of abrasive blasting debris and paint chips. Detail in the SWPPP any standard operating practices relating to blasting/painting (*e.g.*, prohibiting uncontained blasting/painting over open water, or prohibiting blasting/painting during windy conditions which can render containment ineffective).

6.R.4.3.3 *Material Storage Areas.* Store and plainly label all containerized materials (*e.g.*, fuels, paints, solvents, waste oil, antifreeze, batteries) in a protected, secure location away from drains. Implement and describe measures to prevent or minimize the contamination of precipitation/surface runoff from the storage areas. Specify which materials are stored indoors and consider containment or enclosure for those stored outdoors. If abrasive blasting is performed, discuss the storage and disposal of spent abrasive materials generated at the facility. Consider implementing an inventory control plan to limit the presence of potentially hazardous materials onsite.

6.R.4.3.4 *Engine Maintenance and Repair Areas.* Implement and describe measures to prevent or minimize the contamination of precipitation/surface runoff from all areas used for engine maintenance and repair. Consider the following (or their equivalents): performing all maintenance activities indoors; maintaining an organized inventory of materials used in the shop; draining all parts of fluid prior to disposal; prohibiting the practice of hosing down the shop floor; using dry cleanup methods; and treating and/or recycling storm water runoff collected from the maintenance area.

6.R.4.3.5 *Material Handling Area.* Implement and describe measures to prevent or minimize the contamination of precipitation/surface runoff from material handling operations and areas (*e.g.*, fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). Consider the following (or their equivalents): covering fueling areas; using spill/overflow protection; mixing paints and solvents in a designated area (preferably indoors or under a shed); and minimize runon of storm water to material handling areas.

6.R.4.3.6 *Drydock Activities.* Describe your procedures for routinely maintaining/cleaning the drydock to prevent or minimize pollutants in storm water runoff. Address the cleaning of accessible areas of the drydock prior to flooding, and final cleanup following removal of the vessel and raising the dock. Include procedures for cleaning up oil, grease or fuel spills occurring on the drydock. Consider the following (or their equivalents): sweeping rather than hosing off debris/spent blasting material from accessible areas of the drydock prior to flooding, and having absorbent materials and oil containment booms readily available to contain/cleanup any spills.

6.R.4.3.7 *General Yard Area.* Implement and describe a schedule for routine yard maintenance and cleanup. Regularly remove from the general yard area: scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial scrap, insulation, welding rods, packaging, etc.

6.R.4.4 *Preventative Maintenance.* (See also Part 4.2.7.2.1.4) As part of your preventive maintenance program, perform timely inspection and maintenance of storm water management devices (*e.g.*, cleaning oil/water separators and sediment traps to ensure that spent abrasives, paint chips and solids will be intercepted and retained prior to entering the storm drainage system) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

6.R.4.5 *Inspections.* (See also Part 4.2.7.2.1.5) Include the following areas in all monthly inspections: pressure washing area; blasting, sanding and painting areas; material storage areas; engine maintenance/repair areas; material handling areas; drydock area; and general yard area.

6.R.4.6 *Employee Training.* (See also Part 4.2.7.2.1.6) As part of your employee training program, address, at a minimum, the following activities (as applicable): used oil management; spent solvent management; disposal of spent abrasives; disposal of vessel wastewaters; spill prevention and control; fueling procedures; general good housekeeping practices; painting and blasting procedures; and used battery management.

6.R.4.7 *Comprehensive Site Compliance Evaluation.* (See also Part 4.9) Conduct regularly scheduled evaluations at least once a year and address those areas contributing to a storm water discharge associated with industrial activity (*e.g.*, pressure

[3] According to the U.S. Coast Guard, a vessel 65 feet or greater in length is referred to as a ship, and a vessel smaller than 65 feet is a boat.

washing area, blasting/sanding areas, painting areas, material storage areas, engine maintenance/repair areas, material handling areas, and drydock area). They must be visually inspected for evidence of, or the potential for, pollutants entering the drainage system.

6.S Sector S—Air Transportation

6.S.1 Covered Storm Water Discharges

The requirements in Part 6.S apply to storm water discharges associated with industrial activity from Air Transportation facilities as identified by the SIC Codes specified under Sector S in Table 1–1 of Part 1.2.1.

6.S.2 Industrial Activities Covered by Sector S

The types of activities that permittees under Sector S are primarily engaged in are:

6.S.2.1 Air transportation, scheduled, and air courier;

6.S.2.2 Air transportation, non scheduled;

6.S.2.3 Airports; flying fields, except those maintained by aviation clubs; and airport terminal services including: air traffic control, except government; aircraft storage at airports; aircraft upholstery repair; airfreight handling at airports; airport hangar rental; airport leasing, if operating airport; airport terminal services; and hangar operations.

6.S.2.4 Airport and aircraft service and maintenance including: aircraft cleaning and janitorial service; aircraft servicing/repairing, except on a factory basis; vehicle maintenance shops; material handling facilities; equipment clearing operations; and airport and aircraft deicing/anti-icing.

Note: ''deicing'' will generally be used to imply both deicing (removing frost, snow or ice) and anti-icing (preventing accumulation of frost, snow or ice) activities, unless specific mention is made regarding anti-icing and/or deicing activities.

6.S.3 Limitations on Coverage

Only those portions of the facility that are involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations or deicing operations are addressed in Part 6.S.

6.S.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.3.1) Not covered by this permit: aircraft, ground vehicle, runway and equipment washwaters; and dry weather discharges of deicing chemicals. These discharges must be covered by a separate NPDES permit.

6.S.4 Special Conditions

6.S.4.1 *Hazardous Substances or Oil.* (See also Part 3.1) Each individual permittee is required to report spills equal to or exceeding the reportable quantity (RQ) levels specified at 40 CFR 110, 117 and 302 as described at Part 3.2. If an airport authority is the sole permittee, then the sum total of all spills at the airport must be assessed against the RQ. If the airport authority is a co-permittee with other deicing operators at the airport, such as numerous different airlines, the assessed amount must be the summation of spills by each co-permittee. If separate, distinct individual permittees exist at the airport, then the amount spilled by each separate permittee must be the assessed amount for the RQ determination.

6.S.5 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4 of the MSGP.

(See also Part 4.1) If an airport's tenant has a SWPPP for discharges from their own areas of the airport, that SWPPP must be integrated with the plan for the entire airport. Tenants of the airport facility include air passenger or cargo companies, fixed based operators and other parties who have contracts with the airport authority to conduct business operations on airport property and whose operations result in storm water discharges associated with industrial activity.

6.S.5.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify where any of the following may be exposed to precipitation/surface runoff: aircraft and runway deicing operations; fueling stations; aircraft, ground vehicle and equipment maintenance/cleaning areas; storage areas for aircraft, ground vehicles and equipment awaiting maintenance.

6.S.5.2 *Potential Pollutant Sources.* (See also Part 4.2.4) Include in your inventory of exposed materials a description of the potential pollutant sources from the following activities: aircraft, runway, ground vehicle and equipment maintenance and cleaning; aircraft and runway deicing operations (including apron and centralized aircraft deicing stations, runways, taxiways and ramps). If you use deicing chemicals, you must maintain a record of the types (including the Material Safety Data Sheets [MSDS]) used and the monthly quantities, either as measured or, in the absence of metering, as estimated to the best of your knowledge. This includes all deicing chemicals, not just glycols and urea (*e.g.,* potassium acetate), because large quantities of these other chemicals can still have an adverse impact on receiving waters. Tenants or other fixed-based operations that conduct deicing operations must provide the above information to the airport authority for inclusion in any comprehensive airport SWPPPs.

6.S.5.3 *Good Housekeeping Measures.* (See also 4.2.7)

6.S.5.3.1 *Aircraft, Ground Vehicle and Equipment Maintenance Areas.* Describe and implement measures that prevent or minimize the contamination of storm water runoff from all areas used for aircraft, ground vehicle and equipment maintenance (including the maintenance conducted on the terminal apron and in dedicated hangers). Consider the following practices (or their equivalents): performing maintenance activities indoors; maintaining an organized inventory of material used in the maintenance areas; draining all parts of fluids prior to disposal; preventing the practice of hosing down the apron or hanger floor; using dry cleanup methods; and collecting the storm water runoff from the maintenance area and providing treatment or recycling.

6.S.5.3.2 *Aircraft, Ground Vehicle and Equipment Cleaning Areas.* Clean equipment only in the areas identified in the SWPPP and site map and clearly demarcate these areas on the ground. Describe and implement measures that prevent or minimize the contamination of storm water runoff from cleaning areas.

6.S.5.3.3 *Aircraft, Ground Vehicle and Equipment Storage Areas.* Store all aircraft, ground vehicles and equipment awaiting maintenance in designated areas only. Consider the following BMPs (or their equivalents): storing aircraft and ground vehicles indoors; using drip pans for the collection of fluid leaks; and perimeter drains, dikes or berms surrounding the storage areas.

6.S.5.3.4 *Material Storage Areas.* Maintain the vessels of stored materials (*e.g.,* used oils, hydraulic fluids, spent solvents, and waste aircraft fuel) in good condition, to prevent or minimize contamination of storm water. Also plainly label the vessels (e.g., ''used oil,'' ''Contaminated Jet A,'' etc.). Describe and implement measures that prevent or minimize contamination of precipitation/runoff from these areas. Consider the following BMPs (or their equivalents): storing materials indoors; storing waste materials in a centralized location; and installing berms/dikes around storage areas.

6.S.5.3.5 *Airport Fuel System and Fueling Areas.* Describe and implement

measures that prevent or minimize the discharge of fuel to the storm sewer/surface waters resulting from fuel servicing activities or other operations conducted in support of the airport fuel system. Consider the following BMPs (or their equivalents): implementing spill and overflow practices (*e.g.,* placing absorptive materials beneath aircraft during fueling operations); using dry cleanup methods; and collecting storm water runoff.

6.S.5.3.6 *Source Reduction.* Consider alternatives to the use of urea and glycol-based deicing chemicals to reduce the aggregate amount of deicing chemicals used and/or lessen the environmental impact. Chemical options to replace ethylene glycol, propylene glycol and urea include: potassium acetate; magnesium acetate; calcium acetate; anhydrous sodium acetate.

6.S.5.3.6.1 *Runway Deicing Operation:* Evaluate, at a minimum, whether over-application of deicing chemicals occurs by analyzing application rates and adjusting as necessary, consistent with considerations of flight safety. Also consider these BMP options (or their equivalents): metered application of chemicals; pre-wetting dry chemical constituents prior to application; installing a runway ice detection system; implementing anti-icing operations as a preventive measure against ice buildup.

6.S.5.3.6.2 *Aircraft Deicing Operations:* As in Part 6.S.5.3.6.1, determine whether excessive application of deicing chemicals occurs and adjust as necessary, consistent with considerations of flight safety. EPA intends for this evaluation to be carried out by the personnel most familiar with the particular aircraft and flight operations in question (vice an outside entity such as the airport authority). Consider using alternative deicing/anti-icing agents as well as containment measures for all applied chemicals. Also consider these BMP options (or their equivalents) for reducing deicing fluid use: forced-air deicing systems, computer-controlled fixed-gantry systems, infrared technology, hot water, varying glycol content to air temperature, enclosed-basket deicing trucks, mechanical methods, solar radiation, hangar storage, aircraft covers, thermal blankets for MD–80s and DC–9s. Also consider using ice-detection systems and airport traffic flow strategies and departure slot allocation systems.

6.S.5.3.7 Management of Runoff. Where deicing operations occur, describe and implement a program to control or manage contaminated runoff to reduce the amount of pollutants being discharged from the site. Consider these BMP options (or their equivalents): a dedicated deicing facility with a runoff collection/recovery system; using vacuum/collection trucks; storing contaminated storm water/deicing fluids in tanks and releasing controlled amounts to a publicly owned treatment works; collecting contaminated runoff in a wet pond for biochemical decomposition (be aware of attracting wildlife that may prove hazardous to flight operations); and directing runoff into vegetative swales or other infiltration measures. Also consider recovering deicing materials when these materials are applied during non-precipitation events (*e.g.,* covering storm sewer inlets, using booms, installing absorptive interceptors in the drains, etc.) to prevent these materials from later becoming a source of storm water contamination. Used deicing fluid should be recycled whenever possible.

6.S.5.4 *Inspections.* (See also Part 4.2.7.2.1.5) Specify the frequency of inspections in your SWPPP. At a minimum they must be conducted monthly during the deicing season (*e.g.,* October through April for most mid-latitude airports). If your facility needs to deice before or after this period, expand the monthly inspections to include all months during which deicing chemicals may be used. Also, if significantly or deleteriously large quantities of deicing chemicals are being spilled or discharged, or if water quality impacts have been reported, increase the frequency of your inspections to weekly until such time as the chemical spills/discharges or impacts are reduced to acceptable levels. The Director may specifically require you to increase inspections and SWPPP reevaluations as necessary.

6.S.5.5 *Comprehensive Site Compliance Evaluation.* (See also 4.9)

(See also Part 4.9)

Using only qualified personnel, conduct your annual site compliance evaluations during periods of actual deicing operations, if possible. If not practicable during active deicing or the weather is too inclement, conduct the evaluations when deicing operations are likely to occur and the materials and equipment for deicing are in place.

6.S.6 Monitoring and Reporting Requirements. (See also Part 5)

TABLE S–1.—SECTOR-SPECIFIC NUMBERIC LIMITATIONS AND BENCHMARK MONITORING

Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark monitoring cut-off concentration[1]	Numeric limitation
Sector of Permit Affected/Supplemental Requirements			
Facilities at airports that use more than 100,000 gallons of glycol-based deicing/anti-icing chemicals and/or 100 tons or more of urea on an average annual basis: monitor ONLY those outfalls from the airport facility that collect runoff from areas where deicing/anti-icing activities occur (SIC 45XX).	Biochemical Oxygen Demand (BOD_5).	30 mg/L ..... Chemical Oxygen Demand COD).	120.0mg/L. Ammonia 19 mg/L. pH 6/0 to 9 s.u

[1] Monitor once/quarter for the year 2 and year 4 monitoring years.

6.T Sector T—Treatment Works

6.T.1 Covered Storm Water Discharges

The requirements in Part 6.T apply to storm water discharges associated with industrial activity from Treatment Works as identified by the Activity Code specified under Sector T in Table 1–1 of Part 1.2.1.

6.T.2 Industrial Activities Covered by Sector T

The requirements listed under this Part apply to all existing point source storm water discharges associated with the following activities:

6.T.2.1 treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in the storage, treatment, recycling and reclamation of municipal

or domestic sewage; including land dedicated to the disposal of sewage sludge; that are located within the confines of the facility with a design flow of 1.0 MGD or more; or required to have an approved pretreatment program under 40 CFR Part 403.

6.T.2.2 Not required to have permit coverage: farm lands; domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located within the facility; or areas that are in compliance with Section 405 of the CWA.

6.T.3 Limitations on Coverage

6.T.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.3.1) Not authorized by this permit: sanitary and industrial wastewater; and equipment/vehicle washwater.

6.T.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.T.4.1 *Site Map.* (See also Part 4.2.2.3.6) Identify where any of the following may be exposed to precipitation/surface runoff: grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and storage areas for process chemicals, petroleum products, solvents, fertilizers, herbicides and pesticides.

6.T.4.2 *Potential Pollutant Sources.* (See also Part 4.2.4) Describe the following additional sources and activities that have potential pollutants associated with them, as applicable: grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and access roads/rail lines.

6.T.4.3 *Best Management Practices (BMPs).* (See also Part 4.2.7.2) In addition to the other BMPs considered, consider the following: routing storm water to the treatment works; or covering exposed materials (*i.e.,* from the following areas: grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station).

6.T.4.4 *Inspections.* (See also Part 4.2.7.2.1.5) Include the following areas in all inspections: access roads/rail lines; grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station areas.

6.T.4.5 *Employee Training.* (See also Part 4.2.7.2.1.6) At a minimum, must address the following areas when applicable to a facility: petroleum product management; process chemical management; spill prevention and controls; fueling procedures; general good housekeeping practices; proper procedures for using fertilizer, herbicides and pesticides.

6.T.4.6 *Wastewater and Washwater Requirements.* (See also Part 4.4) Attach to your SWPPP a copy of all your current NPDES permits issued for wastewater, industrial, vehicle and equipment washwater discharges or, if an NPDES permit has not yet been issued, a copy of the pending applications. Address any requirements/conditions from the other permits, as appropriate, in the SWPPP. If the washwater is handled in another manner, the disposal method must be described and all pertinent documentation must be attached to the plan.

6.U Sector U—Food and Kindred Products

6.U.1 Covered Storm Water Discharges

The requirements in Part 6.U apply to storm water discharges associated with industrial activity from Food and Kindred Products facilities as identified by the SIC Codes specified in Table 1–1 of Part 1.2.1.

6.U.2 Industrial Activities Covered by Sector U

The types of activities that permittees under Sector U are primarily engaged in are:

6.U.2.1 meat products;
6.U.2.2 dairy products;
6.U.2.3 canned, frozen and preserved fruits, vegetables, and food specialties;
6.U.2.4 grain mill products;
6.U.2.5 bakery products;
6.U.2.6 sugar and confectionery products;
6.U.2.7 fats and oils;
6.U.2.8 beverages;
6.U.2.9 miscellaneous food preparations and kindred products and tobacco products manufacturing.

6.U.3 Limitations on Coverage

Not covered by this permit: storm water discharges identified under Part 1.2.3 from industrial plant yards, material handling sites; refuse sites; sites used for application or disposal of process wastewaters; sites used for storage and maintenance of material handling equipment; sites used for residential wastewater treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; and storage areas for raw material and intermediate and finished products. This includes areas where industrial activity has taken place in the past and significant materials remain. ''Material handling activities'' include the storage, loading/unloading, transportation or conveyance of any raw material, intermediate product, finished product, by-product or waste product.

6.U.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.2.2) Not authorized by this permit: discharges subject to Part 1.2.2.2 include discharges containing: boiler blowdown, cooling tower overflow and blowdown, ammonia refrigeration purging and vehicle washing/clean-out operations.

6.U.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.U.4.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify the locations of the following activities if they are exposed to precipitation/runoff: vents/stacks from cooking, drying and similar operations; dry product vacuum transfer lines; animal holding pens; spoiled product; and broken product container storage areas.

6.U.4.2 *Potential Pollutant Sources.*(See also Part 4.2.4) Describe, in addition to food and kindred products processing-related industrial activities, application and storage of pest control chemicals (*e.g.,* rodenticides, insecticides, fungicides, etc.) used on plant grounds.

6.U.4.3 *Inspections.*(See also Part 4.2.7.2.1.5) Inspect on a regular basis, at a minimum, the following areas where the potential for exposure to storm water exists: loading and unloading areas for all significant materials; storage areas including associated containment areas; waste management units; vents and stacks emanating from industrial activities; spoiled product and broken product container holding areas; animal holding pens; staging areas; and air pollution control equipment.

6.U.4.4 *Employee Training.*(See also Part 4.2.7.2.1.6) Address pest control in the training program.

6.U.5 Monitoring and Reporting Requirements. (See also Part 5)

TABLE U–1. SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

Subsector (Discharges may be subject to requirements for more than one Sector/Subsector)	Parameter	Benchmark monitoring cut-off concentration[1]	Numeric limitation
Part or Permit Affected/Supplemental Requirements			
Grain Mill Products (SIC 2041–2048)	Total Suspended Solids (TSS).	100 mg/L.	
Fats and Oils Products (SIC 2074–2079)	Biochemical Oxygen Demand (BOD_5).	30 mg/L.	
	Chemical Oxygen Demand (COD).	120 mg/L.	
	Nitrate plus Nitrate Nitrogen.	0.68 mg/L.	
	Total Suspended Solids (TSS).	100 mg/L.	

[1] Monitor once/quarter for the year 2 and year 4 Monitoring Years.

6.V Sector V—Textile Mills, Apparel and Other Fabric Products

6.V.1 Covered Storm Water Discharges

The requirements in Part 6.V apply to storm water discharges associated with industrial activity from Textile Mills, Apparel, and Other Fabric Product Manufacturing as identified by the Activity Code specified under Sector V in Table 1–1 of Part 1.2.1.

6.V.2 Industrial Activities Covered by Sector V

The types of activities that permittees under Sector V are primarily engaged in are:

6.V.2.1 textile mill products, of and regarding facilities and establishments engaged in the preparation of fiber and subsequent manufacturing of yarn, thread, braids, twine, and cordage, the manufacturing of broadwoven fabrics, narrow woven fabrics, knit fabrics, and carpets and rugs from yarn;

6.V.2.2 processes involved in the dyeing and finishing of fibers, yarn fabrics, and knit apparel;

6.V.2.3 the integrated manufacturing of knit apparel and other finished articles of yarn;

6.V.2.4 the manufacturing of felt goods (wool), lace goods, non-woven fabrics, miscellaneous textiles, and other apparel products.

6.V.3 Limitations on Coverage

6.V.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.3.1) Not authorized by this permit: discharges of wastewater (*e.g.,* wastewater resulting from wet processing or from any processes relating to the production process); reused/recycled water; and waters used in cooling towers. If you have these types of discharges from your facility, you must cover them under a separate NPDES permit.

6.V.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.V.4.1 *Potential Pollutant Sources.* (See also Part 4.2.4) Describe the following additional sources and activities that have potential pollutants associated with them: industrial-specific significant materials and industrial activities (*e.g.,* backwinding, beaming, bleaching, backing bonding, carbonizing, carding, cut and sew operations, desizing , drawing, dyeing locking, fulling, knitting, mercerizing, opening, packing, plying, scouring, slashing, spinning, synthetic-felt processing, textile waste processing, tufting, turning, weaving, web forming, winging, yarn spinning, and yarn texturing).

6.V.4.2 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.V.4.2.1 *Material Storage Area.* Plainly label and store all containerized materials (*e.g.,* fuels, petroleum products, solvents, dyes, etc.) in a protected area, away from drains. Describe and implement measures that prevent or minimize contamination of the storm water runoff from such storage areas, including a description of the containment area or enclosure for those materials stored outdoors. Also consider an inventory control plan to prevent excessive purchasing of potentially hazardous substances. For storing empty chemical drums/containers, ensure the drums/containers are clean (consider triple-rinsing) and there is no contact of residuals with precipitation/runoff. Collect and dispose of washwater from these cleanings properly.

6.V.4.2.2 *Material Handling Area.* Describe and implement measures that prevent or minimize contamination of storm water runoff from material handling operations and areas. Consider the following (or their equivalents): use of spill/overflow protection; covering fueling areas; and covering/enclosing areas where the transfer of material may occur. Where applicable address the replacement or repair of leaking connections, valves, transfer lines and pipes that may carry chemicals, dyes or wastewater.

6.V.4.2.3 *Fueling Areas.* Describe and implement measures that prevent or minimize contamination of storm water runoff from fueling areas. Consider the following (or their equivalents): covering the fueling area, using spill and overflow protection, minimizing runon of storm water to the fueling areas, using dry cleanup methods, and treating and/or recycling storm water runoff collected from the fueling area.

6.V.4.2.4 *Above Ground Storage Tank Area.* Describe and implement measures that prevent or minimize contamination of the storm water runoff from above ground storage tank areas, including the associated piping and valves. Consider the following (or their equivalents): regular cleanup of these areas; preparation of the spill prevention control and countermeasure program, provide spill and overflow protection; minimizing runoff of storm water from adjacent areas; restricting access to the area; insertion of filters in adjacent catch basins; providing absorbent booms in unbermed fueling areas; using dry cleanup methods; and permanently sealing drains within critical areas that may discharge to a storm drain.

6.V.4.3 *Inspections.* (See also Part 4.2.7.2.1.5) Inspect, at least on a monthly basis, the following activities and areas (at a minimum): transfer and transmission lines; spill prevention; good housekeeping practices; management of process waste products; all structural and non structural management practices.

6.V.4.4 *Employee Training.* (See also Part 4.2.7.2.1.6) As part of your employee training program, address, at a minimum, the following activities (as applicable): use of reused/recycling waters; solvents management; proper disposal of dyes; proper disposal of petroleum products and spent lubricants; spill prevention and control; fueling procedures; and general good housekeeping practices.

6.V.4.5 *Comprehensive Site Compliance Evaluation.* (See also Part 4.9) Conduct regularly scheduled evaluations at least once a year and address those areas contributing to a storm water discharge associated with industrial activity for evidence of, or the potential for, pollutants entering the drainage system. Inspect, at a minimum, as appropriate: storage tank areas; waste disposal and storage areas; dumpsters and open containers stored outside; materials storage areas; engine maintenance and repair areas; material handing areas and loading dock areas.

6.W Sector W—Furniture and Fixtures

6.W.1 Covered Storm Water Discharges

The requirements in Part 6.W apply to storm water discharges associated with industrial activity from Furniture and Fixtures facilities as identified by the Activity Code specified under Sector W in Table 1–1 of Part 1.2.1.

6.W.2 Industrial Activities Covered by Sector W

The types of activities that permittees under Sector W are primarily engaged in the manufacturing of:

6.W.2.1 wood kitchen cabinets;

6.W.2.2 household furniture;

6.W.2.3 office furniture;

6.W.2.4 public buildings and related furniture;

6.W.2.5 partitions, shelving, lockers, and office and store fixtures;

6.W.2.6 miscellaneous furniture and fixtures.

6.W.3 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.W.3.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify where any of the following may be exposed to precipitation/surface runoff: material storage (including tanks or other vessels used for liquid or waste storage) areas; outdoor material processing areas; areas where wastes are treated, stored or disposed; access roads; and rail spurs.

6.X Sector X—Printing and Publishing

6.X.1 Covered Storm Water Discharges

The requirements in Part 6.X apply to storm water discharges associated with industrial activity from Printing and Publishing facilities as identified by the Activity Code specified under Sector X in Table 1.1 of Part 1.2.1.

6.X.2 Industrial Activities Covered by Sector X

The types of activities that permittees under Sector X are primarily engaged in are:

6.X.2.1 book printing;

6.X.2.2 commercial printing and lithographics;

6.X.2.3 plate making and related services;

6.X.2.4 commercial printing, gravure;

6.X.2.5 commercial printing not elsewhere classified.

6.X.3 Storm Water Pollution Prevention Plan Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.X.3.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify where any of the following may be exposed to precipitation/surface runoff: above ground storage tanks, drums and barrel permanently stored outside.

6.X.3.2 *Potential Pollutant Sources.* (See also Part 4.2.4) Describe the following additional sources and activities that have potential pollutants associated with them, as applicable: loading and unloading operations; outdoor storage activities; significant dust or particulate generating processes; and onsite waste disposal practices (*e.g.*, blanket wash). Also identify the pollutant or pollutant parameter (*e.g.*, oil and grease, scrap metal, etc.) associated with each pollutant source.

6.X.3.3 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.X.3.3.1 *Material Storage Areas.* Plainly label and store all containerized materials (*e.g.*, skids, pallets, solvents, bulk inks, and hazardous waste, empty drums, portable/mobile containers of plant debris, wood crates, steel racks, fuel oil, etc.) in a protected area, away from drains. Describe and implement measures that prevent or minimize contamination of the storm water runoff from such storage areas, including a description of the containment area or enclosure for those materials stored outdoors. Also consider an inventory control plan to prevent excessive purchasing of potentially hazardous substances.

6.X.3.3.2 *Material Handling Area.* Describe and implement measures that prevent or minimize contamination of storm water runoff from material handling operations and areas (*e.g.*, blanket wash, mixing solvents, loading/unloading materials). Consider the following (or their equivalents): use of spill/overflow protection; covering fueling areas; and covering/enclosing areas where the transfer of materials may occur. Where applicable address the replacement or repair of leaking connections, valves, transfer lines and pipes that may carry chemicals or wastewater.

6.X.3.3.3 *Fueling Areas.* Describe and implement measures that prevent or minimize contamination of storm water runoff from fueling areas. Consider the following (or their equivalents): covering the fueling area, using spill and overflow protection, minimizing runoff of storm water to the fueling areas, using dry cleanup methods, and treating and/or recycling storm water runoff collected from the fueling area.

6.X.3.3.4 *Above Ground Storage Tank Area.* Describe and implement measures that prevent or minimize contamination of the storm water runoff from above ground storage tank areas, including the associated piping and valves. Consider the following (or their equivalents): regular cleanup of these areas; preparation of the spill prevention control and countermeasure program, provide spill and overflow protection; minimizing runoff of storm water from adjacent areas; restricting access to the area; insertion of filters in adjacent catch basins; providing absorbent booms in unbermed fueling areas; using dry cleanup methods; and permanently sealing drains within critical areas that may discharge to a storm drain.

6.X.3.4 *Employee Training.* (See also Part 4.2.7.2.1.6) As part of your employee training program, address, at a minimum, the following activities (as applicable): spent solvent management; spill prevention and control; used oil management; fueling procedures; and general good housekeeping practices.

6.Y Sector Y—Rubber, Miscellaneous Plastic Products and Miscellaneous Manufacturing Industries

6.Y.1 Covered Storm Water Discharges

The requirements in Part 6.Y apply to storm water discharges associated with industrial activity from Rubber, Miscellaneous Plastic Products and Miscellaneous Manufacturing Industries facilities as identified by the Activity

Code specified under Sector Y in Table 1–1 of Part 1.2.1.

6.Y.2 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.Y.2.1 *Potential Pollutant Sources.* (See also Part 4.2.4) Review the use of zinc at your facility and the possible pathways through which zinc may be discharged in storm water runoff.

6.Y.2.2 *Controls for Rubber Manufacturers.* (See also Part 4.2.7) Describe and implement specific controls to minimize the discharge of zinc in your storm water discharges. Parts 6.Y.2.2.1 to 6.Y.2.2.5 give possible sources of zinc to be reviewed and list some specific BMPs to be considered for implementation (or their equivalents). Some general BMP options to consider: using chemicals which are purchased in pre-weighed, sealed polyethylene bags; storing materials which are in use in sealable containers; ensuring an airspace between the container and the cover to minimize ''puffing'' losses when the container is opened; and using automatic dispensing and weighing equipment.

6.Y.2.2.1 Inadequate Housekeeping. Review the handling and storage of zinc bags at your facility. BMP options: employee training on the handling/storage of zinc bags; indoor storage of zinc bags; cleanup zinc spills without washing the zinc into the storm drain, and the use of 2,500-pound sacks of zinc rather than 50- to 100-pound sacks;

6.Y.2.2.2 Dumpsters. Reduce discharges of zinc from dumpsters. BMP options: covering the dumpster; moving the dumpster indoors; or provide a lining for the dumpster.

6.Y.2.2.3 Malfunctioning Dust Collectors or Baghouses: Review dust collectors/baghouses as possible sources in zinc in storm water runoff. Replace or repair, as appropriate, improperly operating dust collectors/baghouses.

6.Y.2.2.4 *Grinding Operations.*

Review dust generation from rubber grinding operations and, as appropriate, install a dust collection system.

6.Y.2.2.5 Zinc Stearate Coating Operations. Detail appropriate measures to prevent or clean up drips/spills of zinc stearate slurry that may be released to the storm drain. BMP option: using alternate compounds to zinc stearate.

6.Y.2.3 *Controls for Plastic Products Manufacturers.* Describe and implement specific controls to minimize the discharge of plastic resin pellets in your storm water discharges. BMPs to be considered for implementation (or their equivalents): minimizing spills; cleaning up of spills promptly and thoroughly; sweeping thoroughly; pellet capturing; employee education and disposal precautions.

6.Y.3 Monitoring and Reporting Requirements. (See also Part 5)

TABLE Y–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

Subsector	Parameter	Benchmark monitoring cut-off concentration	Numeric limitations
Part of Permit Affected/Supplemental Requirements			
Tires and Inner Tubes; Rubber Footwear; Gaskets, Packing and Sealing Devices; Rubber Hose and Belting; and Fabricated Rubber Products, Not Elsewhere Classified (SIC 3011–3069, rubber.	Total Recoverable Zinc	0.117 mg/L	

[1] Monitor once/quarter for the year 2 and year 4 Monitoring Years.

6.Z Sector Z—Leather Tanning and Finishing

6.Z.1 Covered Storm Water Discharges

The requirements in Part 6.Z apply to storm water discharges associated with industrial activity from Leather Tanning and Finishing facilities as identified by the Activity Code specified under Sector Z in Table 1–1 of Part 1.2.1.

6.Z.2 Industrial Activities Covered by Sector Z

The types of activities that permittees under Sector Z are primarily engaged are leather tanning, curry and finishing;

6.Z.3 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.Z.3.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify where any of the following may be exposed to precipitation/surface runoff: processing and storage areas of the beamhouse, tanyard, and re-tan wet finishing and dry finishing operations; and haul roads, access roads and rail spurs.

6.Z.3.2 *Potential Pollutant Sources.* (See also Part 4.2.4) At a minimum, describe the following additional sources and activities that have potential pollutants associated with them (as appropriate): temporary or permanent storage of fresh and brine cured hides; extraneous hide substances and hair; leather dust, scraps, trimmings and shavings; chemical drums, bags, containers and above ground tanks; empty chemical containers and bags; spent solvents; floor sweepings/washings; refuse, waste piles and sludge; and significant dust/particulate generating processes (*e.g.,* buffing).

6.Z.3.3 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.Z.3.3.1 *Storage Areas for Raw, Semiprocessed or Finished Tannery Byproducts.* Pallets/bales of raw, semiprocessed or finished tannery byproducts (*e.g.,* splits, trimmings, shavings, etc.) should be stored indoors or protected by polyethylene wrapping, tarpaulins, roofed storage, etc. Consider placing materials on an impermeable surface, and enclosing or putting berms (or equivalent measures) around the area to prevent storm water runon/runoff.

6.Z.3.3.2 *Material Storage Areas.* Label storage containers of all materials (*e.g.,* specific chemicals, hazardous materials, spent solvents, waste materials). Describe and implement measures that prevent/minimize contact with storm water.

6.Z.3.3.3 *Buffing and Shaving Areas.* Describe and implement measures that prevent or minimize contamination of storm water runoff with leather dust from buffing/shaving areas. Consider dust collection enclosures, preventive inspection/maintenance programs or other appropriate preventive measures.

6.Z.3.3.4 *Receiving, Unloading, and Storage Areas.* Describe and implement measures that prevent or minimize contamination of storm water runoff from receiving, unloading, and storage areas. If these areas are exposed, consider (or their equivalent): Covering all hides and chemical supplies; diverting drainage to the process sewer;

or grade berming/curbing area to prevent runoff of storm water.

6.Z.3.3.5 *Outdoor Storage of Contaminated Equipment.* Describe and implement measures that prevent or minimize contact of storm water with contaminated equipment. Consider (or their equivalent): Covering equipment; diverting drainage to the process sewer; and cleaning thoroughly prior to storage.

6.Z.3.3.6 *Waste Management.* Describe and implement measures that prevent or minimize contamination of storm water runoff from waste storage areas. Consider (or their equivalent): Inspection/maintenance programs for leaking containers or spills; covering dumpsters; moving waste management activities indoors; covering waste piles with temporary covering material such as tarpaulins or polyethylene; and minimizing storm water runoff by enclosing the area or building berms around the area.

6.AA Sector AA—Fabricated Metal Products

6.AA.1 Covered Storm Water Discharges

The requirements in Part 6.AA apply to storm water discharges associated with industrial activity from Fabricated Metal Products facilities as identified by the Activity Code specified under Sector AA in Table 1–1 of Part 1.2.1.

6.AA.2 Industrial Activities Covered by Sector AA

The types of activities that permittees under Sector AA are primarily engaged in are:

6.AA.2.1 Fabricated metal products; except for electrical related industries;

6.AA.2.2 Fabricated metal products; except machinery and transportation equipment;

6.AA.2.3 Jewelry, silverware, and plated ware.

6.AA.3 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.AA.3.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify where any of the following may be exposed to precipitation/surface runoff: Raw metal storage areas; finished metal storage areas; scrap disposal collection sites; equipment storage areas; retention and detention basins; temporary/permanent diversion dikes or berms; right-of-way or perimeter diversion devices; sediment traps/barriers; processing areas including outside painting areas; wood preparation; recycling; and raw material storage.

6.AA.3.2 *Spills and Leaks.* (See also Part 4.2.5) When listing significant spills/leaks, pay attention to the following materials at a minimum: Chromium, toluene, pickle liquor, sulfuric acid, zinc and other water priority chemicals and hazardous chemicals and wastes.

6.AA.3.3 *Potential Pollutant Sources.* (See also Part 4.2.4) Describe the following additional sources and activities that have potential pollutants associated with them: Loading and unloading operations for paints, chemicals and raw materials; outdoor storage activities for raw materials, paints, empty containers, corn cob, chemicals, and scrap metals; outdoor manufacturing or processing activities such as grinding, cutting, degreasing, buffing, brazing, etc; onsite waste disposal practices for spent solvents, sludge, pickling baths, shavings, ingots pieces, refuse and waste piles.

6.AA.3.4 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.AA.3.4.1 *Raw Steel Handling Storage.* Describe and implement measures controlling or recovering scrap metals, fines and iron dust. Include measures for containing materials within storage handling areas.

6.AA.3.4.2 *Paints and Painting Equipment.* Describe and implement measures to prevent or minimize exposure of paint and painting equipment to storm water.

6.AA.3.5 *Spill Prevention and Response Procedures.* (See also Part 4.2.7.2.1.4) Ensure the necessary equipment to implement a clean up is available to personnel. The following areas should be addressed:

6.AA.3.5.1 *Metal Fabricating Areas.* Describe and implement measures for maintaining clean, dry, orderly conditions in these areas. Consider the use of dry clean-up techniques.

6.AA.3.5.2 *Storage Areas for Raw Metal.* Describe and implement measures to keep these areas free of condition that could cause spills or leakage of materials. Consider the following (or their equivalents): maintaining storage areas such that there is easy access in the event of a spill; and labeling stored materials to aid in identifying spill contents.

6.AA.3.5.3 *Receiving, Unloading, and Storage Areas.* Describe and implement measures to prevent spills and leaks; plan for quick remedial clean up; and instruct employees on clean-up techniques and procedures.

6.AA.3.5.4 *Storage of Equipment.* Describe and implement measures for preparing equipment for storage and the proper storage of equipment. Consider the following (or their equivalents): protecting with covers; storing indoors; and cleaning potential pollutants from equipment to be stored outdoors.

6.AA.3.5.5 *Metal Working Fluid Storage Areas.* Describe and implement measures for storage of metal working fluids.

6.AA.3.5.6 *Cleaners and Rinse Water.* Describe and implement measures: to control/cleanup spills of solvents and other liquid cleaners; control sand buildup and disbursement from sand-blasting operations; and prevent exposure of recyclable wastes. Substitute environmentally-benign cleaners when possible.

6.AA.3.5.7 *Lubricating Oil and Hydraulic Fluid Operations.* Consider using monitoring equipment or other devices to detect and control leaks/overflows. Consider installing perimeter controls such as dikes, curbs, grass filter strips or other equivalent measures.

6.AA.3.5.8 *Chemical Storage Areas.* Describe and implement proper storage methods that prevent storm water contamination and accidental spillage. Include a program to inspect containers and identify proper disposal methods.

6.AA.3.6 *Inspections.* (See also Part 4.2.7.2.1.5) Include, at a minimum, the following areas in all inspections: raw metal storage areas; finished product storage areas; material and chemical storage areas; recycling areas; loading and unloading areas; equipment storage areas; paint areas; vehicle fueling and maintenance areas.

6.AA.3.7 *Comprehensive Site Compliance Evaluation.* (See also Part 4.9.2) As part of your evaluation, also inspect: areas associated with the storage of raw metals; storage of spent solvents and chemicals; outdoor paint areas; and drainage from roof. Potential pollutants include chromium, zinc, lubricating oil, solvents, aluminum, oil and grease, methyl ethyl ketone, steel and other related materials.

6.AA.4 Monitoring and Reporting Requirements

(See also Part 5)

TABLE AA–1.—SECTOR-SPECIFIC NUMERIC LIMITATIONS AND BENCHMARK MONITORING

Subsector (Discharges may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark, monitoring, cutoff, concentration[1]	Numeric limitation
Part of Permit Affected/Supplemental Requirements			
Fabricated Metal Products Except Coating (SIC 3411–3471, 3482–3499, 3911–3915).	Total Recoverable Aluminum.	0.75 mg/L.	
	Total Recoverable Iron	1.0 mg/L.	
	Total Recoverable Zinc	0.117 mg/L.	
	Nitrate plus Nitrite Nitrogen	0.68 mg/L.	
Fabricated Metal Coating and Engraving (SIC 3479)	Total Recoverable Zinc	0.117 mg/L.	
	Nitrate plus Nitrite Nitrogen	0.68 mg/L.	

[1] Monitor once/quarter for the year 2 and year 4 Monitoring Years

6.AB Sector AB—Transportation Equipment, Industrial or Commercial Machinery

6.AB.1 Covered Storm Water Discharges

The requirements in Part 6.AB apply to storm water discharges associated with industrial activity from Transportation Equipment, Industrial or Commercial Machinery facilities as identified by the Activity Code specified under Sector AB in Table 1–1 of Part 1.2.1.

6.AB.2 Industrial Activities Covered by Sector AB

The types of activities that permittees under Sector AB are primarily engaged in are:

6.AB.2.1 Industrial and Commercial Machinery (except Computer and Office Equipment) (see Sector AC); and

6.AB.2.2 Transportation Equipment (except Ship and Boat Building and Repairing) (see Sector R).

6.AB.3 Storm Water Pollution Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.AB.3.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify where any of the following may be exposed to precipitation/surface runoff: vents and stacks from metal processing and similar operations.

6.AB.3.2 *Non-Storm Water Discharges.* (See also Part 4.4) If your facility has a separate NPDES permit (or has applied for a permit) authorizing discharges of wastewater, attach a copy of the permit (or the application) to your SWPPP. Any new wastewater permits issued/reissued to you must then replace the old one in your SWPPP. If you discharge wastewater, other than solely domestic wastewater, to a Publicly Owned Treatment Works (POTW), you must notify the POTW of the discharge (identify the types of wastewater discharged, including any storm water). As proof of this notification, attach to your SWPPP a copy of the permit issued to your facility by the POTW or a copy of your notification to the POTW.

6.AC Sector AC—Electronic, Electrical Equipment and Components, Photographic and Optical Goods

6.AC.1 Covered Storm Water Discharges

The requirements in Part 6.AC apply to storm water discharges associated with industrial activity from facilities that manufacture Electronic, Electrical Equipment and Components, Photographic and Optical Goods as identified by the SIC Codes specified in Table 1–1 of Part 1.2.1.

6.AC.2 Industrial Activities Covered by Sector AC

The types of manufacturing activities that permittees under Sector AC are primarily engaged in are:

6.AC.2.1 Measuring, analyzing, and controlling instruments;

6.AC.2.2 Photographic, medical and optical goods;

6.AC.2.3 Watches and clocks; and

6.AC.2.4 Computer and office equipment.

6.AC.3 Additional Requirements

No additional sector-specific requirements apply to this sector.

6.AD Storm Water Discharges Designated by the Director as Requiring Permits

6.AD.1 Covered Storm Water Discharges

Sector AD is used to provide permit coverage for facilities designated by the Director as needing a storm water permit, or any discharges of industrial activity that do not meet the description of an industrial activity covered by Sectors A–AC. Therefore, almost any type of storm water discharge could be covered under this sector. You must be assigned to Sector AD by the Director and may NOT choose sector AD as the sector describing your activities on your own.

6.AD.1.1 *Eligibility for Permit Coverage.* Because this Sector only covers discharges designated by the Director as needing a storm water permit (which is an atypical circumstance) or your facility's industrial activities were inadvertently left out of Sectors A–AC, and your facility may or may not normally be discharging storm water associated with industrial activity, you must obtain the Director's written permission to use this permit prior to submitting a Notice of Intent. If you are authorized to use this permit, you will be required to ensure your discharges meet the basic eligibility provisions of this permit at Part 1.2.

6.AD.2 Storm Water Pollution Prevention Plan (SWPPP) Requirements

The Director will establish any additional Storm Water Pollution Prevention Plan requirements for your facility at the time of accepting your Notice of Intent to be covered by this permit. Additional requirements would be based on the nature of activities at your facility and your storm water discharges.

6.AD.3 Monitoring and Reporting Requirements

The Director will establish any additional monitoring and reporting requirements for your facility at the time of accepting your Notice of Intent to be covered by this permit. Additional requirements would be based on the nature of activities at your facility and your storm water discharges.

7. Reporting

7.1 Reporting Results of Monitoring

Depending on the types of monitoring required for your facility, you may have to submit the results of your monitoring or you may only have to keep the results

with your Storm Water Pollution Prevention Plan. You must follow the reporting requirements and deadlines in Table 7–1 that apply to the types of monitoring that apply to your facility.

If required by the conditions of the permit that apply to your facility, you must submit analytical monitoring results obtained from each outfall associated with industrial activity (or a certification as per 5.3.1) on a Discharge Monitoring Report (DMR) form (one form must be submitted for each storm event sampled). An example of a form is found in the Guidance Manual for the Monitoring and Reporting Requirements of the NPDES Storm Water Multi-Sector General Permit. A copy of the DMR is also available on the Internet at *http://www.epa.gov/owm/sw/permits-and-forms/index.htm.* The signed DMR must be sent to: MSGP DMR (4203), US EPA, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Note: If EPA notifies dischargers (either directly, by public notice or by making information available on the Internet) of other DMR form options that become available at a later date (*e.g.*, electronic submission of forms), you may take advantage of those options to satisfy the DMR use and submission requirements of Part 7.

TABLE 7–1.—DMR/ALTERNATIVE CERTIFICATION SUBMISSION DEADLINES

Type of monitoring	Reporting deadline (postmark)
Monitoring for Numeric Limitation	Submit results by the 28th day of the month following the monitoring period.
Benchmark Monitoring:	
Monitoring Year 2001–2002	Save and submit all results for year in one package by January 28, 2003.
Monitoring Year 2003–2004	Save and submit all results for year in one package by January 28, 2005.
Biannual Monitoring for Metal Mining Facilities (see Part 6.G).	Save and submit all results for year in one package by January 28 of the year following the monitoring year.
Visual Monitoring	Retain results with SWPPP—do not submit unless requested to do so by Permitting Authority.
State/Tribal/Territory—Specific Monitoring	See Part 13 (conditions for specific States, Indian country, and Territories).

7.2 Additional Reporting for Dischargers to a Large or Medium Municipal Separate Storm Sewer System

If you discharge storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more), you must also submit signed copies of your discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in Table 7–1.

7.3 Miscellaneous Reports

You must submit any other reports required by this permit to the Director of the NPDES program at the address of the appropriate Regional Office listed in Part 8.3.

8. Retention of Records

8.1 Documents

In addition to the requirements of Part 9.16.2, you must retain copies of Storm Water Pollution Prevention Plans and all reports and certifications required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date that the facility's coverage under this permit expires or is terminated. This period may be extended by request of the Director at any time.

8.2 Accessibility

You must retain a copy of the Storm Water Pollution Prevention Plan required by this permit (including a copy of the permit language) at the facility (or other local location accessible to the Director, a State, Tribal or Territorial agency with jurisdiction over water quality protection; local government officials; or the operator of a municipal separate storm sewer receiving discharges from the site) from the date of permit coverage to the date of permit coverage ceases. You must make a copy of your Storm Water Pollution Prevention Plan available to the public if requested to do so in writing.

8.3 Addresses

Except for the submittal of NOIs and NOTs (see Parts 2.1 and 11.2, respectively), all written correspondence concerning discharges in any State, Indian country land, Territory, or from any Federal facility covered under this permit and directed to the EPA, including the submittal of individual permit applications, must be sent to the address of the appropriate EPA Regional Office listed below:

8.3.1 Region 1: CT, MA, ME, NH, RI, VT

EPA Region 1, Office of Ecosystem Protection, One Congress Street—CMU, Boston, MA 02114.

8.3.2 Region 2: NJ, NY, PR, VI

United States EPA, Region 2, Caribbean Environmental Protection Division, Environmental Management Branch, Centro Europa Building, 1492 Ponce de Leon Ave., Suite 417, San Juan, PR 00907–4127.

8.3.3 Region 3: DE, DC, MD, PA, VA, WV

EPA Region 3, Water Protection Division (3WP13), Storm Water Coordinator, 1650 Arch Street, Philadelphia, PA 19103.

8.3.4 Region 4: AL, FL, GA, KY, MS, NC, SC, TN

Environmental Protection Agency, Region 4, Clean Water Act Enforcement Section, Water Programs Enforcement Branch, Water Management Division, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303.

8.3.5 Region 5: IL, IN, MI, MN, OH, WI

(Coverage Not Available Under This Permit.)

8.3.6 Region 6: AR, LA, OK, TX, NM

(Except see Region 9 for Navajo lands, and see Region 8 for Ute Mountain Reservation lands)

United States EPA, Region 6, Storm Water Staff, Enforcement and Compliance Assurance Division (GEN–WC), EPA SW MSGP, P.O. Box 50625, Dallas, TX 75205.

8.3.7 Region 7:

(Coverage Not Available Under This Permit.)

8.3.8 Region 8: CO, MT, ND, SD, WY, UT

(Except see Region 9 for Goshute Reservation and Navajo Reservation lands), the Ute Mountain Reservation in NM, and the Pine Ridge Reservation in NE

United States EPA, Region 8, Ecosystems Protection Program (8EPR–

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Spill Reporting
(Federal Register Volume 65, No. 210, October 30, 2000, Notices, p. 64760)

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fighting activities; fire hydrant flushings; potable water sources, including waterline flushings; irrigation drainage; lawn watering; routine external building washdown without detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; compressor condensate; uncontaminated ground water or spring water; and foundation or footing drains where flows are not contaminated with process materials such as solvents that are combined with storm water discharges associated with industrial activity. In response to a comment, the final MSGP includes ''potable water sources, including waterline flushings'' on the list of authorized non-storm water discharges, but deletes the reference to ''drinking fountain water,'' which a commenter felt could conflict with local ordinances.

To be authorized under today's MSGP, these other sources of non-storm water (except flows from fire fighting activities) must be identified in the SWPPP prepared for the facility. (SWPPP requirements are discussed in more detail below). Where such discharges occur, the SWPPP must also identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

Today's final MSGP does not require pollution prevention measures to be identified and implemented for non-storm water flows from fire-fighting activities because these flows will generally be unplanned emergency situations where it is necessary to take immediate action to protect the public.

The prohibition of unpermitted non-storm water discharges in today's MSGP ensures that non-storm water discharges (except for those classes of non-storm water discharges that are conditionally authorized in Part 1.2.2.2 of the MSGP) are not inadvertently authorized by the permit. Where a storm water discharge is mixed with non-storm water that is not authorized by today's MSGP or another NPDES permit, the discharger should submit the appropriate application forms (Forms 1, 2C, and/or 2E) to gain permit coverage of the non-storm water portion of the discharge.

2. Releases of Reportable Quantities of Hazardous Substances and Oil

As discussed below, today's final MSGP includes the same provisions pertaining to releases of reportable quantities of hazardous substances and oil as the 1995 MSGP.

a. Today's final MSGP provides that the discharge of hazardous substances or oil from a facility must be eliminated or minimized in accordance with the SWPPP developed for the facility. Where a permitted storm water discharge contains a hazardous substance or oil in an amount equal to or in excess of a reporting quantity established under 40 CFR Part 117, or 40 CFR Part 302 during a 24-hour period, the following actions must be taken:

(1) Any person in charge of the facility that discharges hazardous substances or oil is required to notify the National Response Center (NRC) (800–424–8802; in the Washington, DC, metropolitan area, 202–426–2675) in accordance with the requirements of 40 CFR Part 117, and 40 CFR Part 302 as soon as they have knowledge of the discharge.

(2) The SWPPP for the facility must be modified within 14 calendar days of knowledge of the release to provide a description of the release, an account of the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and it must be modified where appropriate.

(3) The permittee must also submit to EPA within 14 calendar days of knowledge of the release a written description of the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken to modify the SWPPP for the facility.

b. Anticipated discharges containing a hazardous substance in an amount equal to or in excess of reporting quantities are those caused by events occurring within the scope of the relevant operating system. Facilities that have more than one anticipated discharge per year containing a hazardous substance in an amount equal to or in excess of a reportable quantity are required to:

(1) Submit notifications of the first release that occurs during a calendar year (or for the first year of this permit, after submission of an NOI); and

(2) Provide a written description in the SWPPP of the dates on which such releases occurred, the type and estimate of the amount of material released, and the circumstances leading to the releases. In addition, the SWPPP must address measures to minimize such releases.

c. Where a discharge of a hazardous substance or oil in excess of reporting quantities is caused by a non-storm water discharge (e.g., a spill of oil into a separate storm sewer), that discharge is not authorized by the MSGP and the discharger must report the discharge as required under 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302. In the event of a spill, the requirements of Section 311 of the CWA and other applicable provisions of Sections 301 and 402 of the CWA continue to apply. This approach is consistent with the requirements for reporting releases of hazardous substances and oil that make a clear distinction between hazardous substances typically found in storm water discharges and those associated with spills that are not considered part of a normal storm water discharge (see 40 CFR 117.12(d)(2)(i)).

3. Co-located Industrial Facilities

Like the 1995 MSGP, today's MSGP includes requirements pertaining to co-located industrial facilities. However, these requirements have been modified from the requirements of the 1995 MSGP to clarify their applicability. Co-located industrial activities occur when activities being conducted onsite fall into more than one of the categories of the industrial facilities listed in Part 1.2.1 of today's MSGP (e.g., a landfill at a wood treatment facility). Facilities operating under the 1995 MSGP have sometimes been unclear whether certain limited activities (e.g., minor vehicle maintenance activities at an industrial plant) would trigger the MSGP's requirements regarding co-located activities.

If you have co-located industrial activities on-site that are described in a sector(s) other than your primary sector, you must comply with all other applicable sector-specific conditions found in Part 6 for the co-located industrial activities. The extra sector-specific requirements are applied only to those areas of your facility where the extra-sector activities occur. An activity at a facility is not considered co-located if the activity, when considered separately, does not meet the description of a category of industrial activity covered by the storm water regulations, and identified by today's MSGP SIC code list. For example, unless you are actually hauling substantial amounts of freight or materials with your own truck fleet or are providing a trucking service to outsiders, simple maintenance of vehicles used at your facility is unlikely to meet the SIC code group 42 description of a motor freight transportation facility. Even though Sector P may not apply, the runoff from your vehicle maintenance facility would likely still be considered storm water

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Appendix C7

Conditional Exclusion for No Exposure
(Federal Register Volume 65, No. 210, October 30, 2000, Notices, p. 64759)

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authorized by an NPDES general permit have been eliminated or that I am no longer the operator of the industrial activity. I understand that by submitting this Notice of Termination I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by an NPDES permit. I also understand that the submission of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

NOTs are to be sent to the Storm Water Notice of Termination (4203), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

The NOT must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements is provided in the instructions accompanying the NOT.

5. Conditional Exclusion for No Exposure

Today's final MSGP includes a special provision (Part 1.5 of the permit) which provides that a facility may discontinue permit coverage if the facility determines that it is eligible for the ''no exposure'' permit exemption which was created by EPA as part of the promulgation of the Phase II storm water regulations (64 FR 68722). A notice of termination is not required to discontinue permit coverage under these circumstances. However, in accordance with the Phase II regulations, a no exposure certification must be filed with the permitting authority.

It should also be noted that facilities operating under the existing MSGP are eligible, as of the effective date of the Phase II regulations, to submit no exposure certifications immediately if they meet the criteria for no exposure. No exposure certification renewals must be submitted five years from the time they are first submitted (assuming the facility still qualifies for the exemption). If conditions change at a facility such that renewed MSGP coverage is needed, the facility may submit an NOI requesting renewed coverage.

In response to comments on this matter, EPA has included a copy of the ''No Exposure'' form and instructions as Addendum F to today's permit.

EPA has also prepared a new guidance document entitled ''Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on ''No Exposure'' of Industrial Activities to Storm Water'' to assist permittees in determining eligibility for the exemption. This guidance document is available on EPA's storm water website. In addition, EPA recently conducted a mass mailing to permittees (as well as other stakeholder groups) alerting them to the no exposure exemption.

B. Special Conditions

The conditions of today's final MSGP have been designed to comply with the technology-based standards of the CWA (BAT/BCT). Based on a consideration of the appropriate factors for BAT and BCT requirements, and a consideration of the factors and options for controlling pollutants in storm water discharges associated with industrial activity, the final MSGP lists a set of tailored requirements for developing and implementing storm water pollution prevention plans (SWPPPs) and, for selected discharges, numeric effluent limitations.[2] This is the same approach as in the 1995 MSGP.

Section VIII of the fact sheet for the 1995 MSGP summarized the industry-specific BMP options for controlling pollutants in storm water discharges associated with industrial activity for the various industrial sectors covered by the MSGP. Section VIII of today's fact sheet does not repeat the information from the 1995 fact sheet; however, updates are provided as appropriate.

Section VI.B.4 of today's fact sheet discusses the storm water discharges which are subject to numeric effluent limitations. For other discharges covered by the final MSGP, the permit conditions reflect EPA's decision to identify a number of BMP and traditional storm water management practices which prevent pollution in storm water discharges as the BAT/BCT level of control for the majority of storm water discharges covered by this permit. The permit conditions applicable to these discharges are not numeric effluent limitations, but rather are flexible requirements for developing and implementing site specific plans to minimize and control pollutants in storm water discharges associated with industrial activity.

EPA is authorized under 40 CFR 122.44(k)(2) to impose BMPs in lieu of numeric effluent limitations in NPDES permits when the Agency finds numeric effluent limitations to be infeasible. EPA may also impose BMPs which are ''reasonably necessary * * * to carry out the purposes of the Act'' under 40 CFR 122.44(k)(3). Both of these standards for imposing BMPs were recognized in *NRDC* v. *Costle,* 568 F.2d 1369, 1380 (D.C. Cir. 1977). The conditions in today's final MSGP are issued under the authority of both of these regulatory provisions. The pollution prevention or BMP requirements in today's final MSGP operate as limitations on effluent discharges that reflect the application of BAT/BCT. This is because the BMPs identified require the use of source control technologies which, in the context of the MSGP, are the best available of the technologies economically achievable (or the equivalent BCT finding). See *NRDC* v. *EPA,* 822 F.2d 104, 122–23 (D.C. Cir. 1987) (EPA has substantial discretion to impose nonquantitative permit requirements pursuant to Section 402(a)(1)). See also EPA's memorandum of August 1, 1996 entitled ''Interim Permitting Approach for Water Quality-Based Effluent Limitations for Storm Water Discharges.''

1. Prohibition of Non-storm Water Discharges

Today's final MSGP includes basically the same provisions pertaining to non-storm water discharges as the 1995 MSGP. Like the 1995 MSGP, today's MSGP does not authorize non-storm water discharges that are mixed with storm water except as provided below. Today's MSGP does authorize one additional non-storm water discharge: mist discharges which originate from cooling towers and which are deposited at an industrial facility and may be discharged. During the term of the 1995 MSGP, these discharges were brought to the attention of EPA with a request that the discharges be authorized under the reissued MSGP. The mist discharges are authorized under today's MSGP provided:

a. The permittee has evaluated the potential for the discharges to be contaminated by chemicals used in the cooling tower and determined that the levels of such chemicals in the discharges would not cause or contribute to a violation of an applicable water quality standard; and

b. The permittee has addressed this source of pollutants with appropriate BMPs in the SWPPP.

The other non-storm water discharges that are authorized under today's final MSGP are the same as those in the 1995 MSGP and include discharges from fire

[2] Section 9.12.2 of the final MSGP provides that facility operators with storm water discharges associated with industrial activity who, based on an evaluation of site specific conditions, believe that the appropriate conditions of this permit do not adequately represent BAT and BCT requirements for the facility may submit to the Director an individual application (Form 1 and Form 2F). A detailed explanation of the reasons why the conditions of the available general permits do not adequately represent BAT and BCT requirements for the facility as well as any supporting documentation must be included.

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Appendix C8

Penalties for Violations of Permit Conditions for Industrial Activities
(Federal Register Volume 65, No. 210, October 30, 2000, Notices, p. 64853)

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EP), Storm Water Staff, 999 18th Street, Suite 300, Denver, CO 80202–2466.

8.3.9 Region 9: AZ, CA, HI, NV, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Goshute Reservation in UT and NV, the Navajo Reservation in UT, NM, and AZ, the Duck Valley Reservation in ID, Fort McDermitt Reservation in OR

United States EPA, Region 9, Water Management Division, WTR–5, Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105.

8.3.10 Region 10: ID, WA, OR

(Except see Region 9 for Fort McDermitt Reservation.)

United States EPA, Region 10, Office of Water OW–130, 1200 6th Avenue, Seattle, WA 98101.

8.4 State, Tribal, and Other Agencies

See Part 13 for addresses of States or Tribes that require submission of information to their agencies.

9. Standard Permit Conditions

9.1 Duty To Comply

9.1.1 You must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

9.1.2 *Penalties for Violations of Permit Conditions:* The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (**Federal Register:** December 31, 1996, Volume 61, Number 252, pages 69359–69366, as corrected, March 20, 1997, Volume 62, Number 54, pages 13514–13517) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every four years thereafter and to adjust them as necessary for inflation according to a specified formula. The civil and administrative penalties listed below were adjusted for inflation starting in 1996.

9.1.2.1 *Criminal Penalties.*

9.1.2.1.1 *Negligent Violations.* The CWA provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

9.1.2.1.2 *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

9.1.2.1.3 *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

9.1.2.1.4 *False Statement.* The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See section 309(c)(4) of the Clean Water Act.)

9.1.2.2 *Civil Penalties.* The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $27,500 per day for each violation.

9.1.2.3 *Administrative Penalties.* The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

9.1.2.3.1 *Class I Penalty.* Not to exceed $11,000 per violation nor shall the maximum amount exceed $27,500.

9.1.2.3.2 *Class II Penalty.* Not to exceed $11,000 per day for each day during which the violation continues nor shall the maximum amount exceed $137,500.

9.2 Continuation of the Expired General Permit

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and effect. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:

9.2.1 Reissuance or replacement of this permit, at which time you must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or

9.2.2 Your submittal of a Notice of Termination; or

9.2.3 Issuance of an individual permit for your discharges; or

9.2.4 A formal permit decision by the Director not to reissue this general permit, at which time you must seek coverage under an alternative general permit or an individual permit.

9.3 Need To Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

9.4 Duty To Mitigate

You must take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

9.5 Duty To Provide Information

You must furnish to the Director or an authorized representative of the Director any information which is requested to determine compliance with this permit or other information.

9.6 Other Information

If you become aware that you have failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, you must promptly submit such facts or information.

9.7 Signatory Requirements

All Notices of Intent, Notices of Termination, Storm Water Pollution Prevention Plans, reports, certifications or information either submitted to the Director or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by you, must be signed as follows:

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